The Report of the Colleges Collective Bargaining Commission

Jeffrey Gandz, Commissioner

January 1988

Ontario

Colleges
Collective Bargaining
Commission

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dans les collèges

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January 27, 1988

The Honourable Lyn McLeod
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Queen's Park
Toronto, Ontario
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Dear Minister:

I am very pleased to submit the report of the Colleges Collective Bargaining Commission.

Yours truly,

Jeffrey Gandz

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COLLEGES COLLECTIVE BARGAINING COMMISSION

TERMS OF REFERENCE

That bearing in mind the general public good and the good of the college system in Ontario, including the institutions themselves, the rights of employees to just and equitable remuneration and conditions of employment, and the ability of the province to pay, the Colleges Collective Bargaining Commission will review and advise the Minister of Colleges and Universities on the effectiveness of the current college collective bargaining process. In particular, the Commission will examine whether:

- Negotiations between unionized staff and the Ontario Council of Regents should continue on the basis now provided under the Colleges Collective Bargaining Act, 1975, and, if so, what changes should be made to facilitate the operation of the collective bargaining process in the light of experiences to date;

- Negotiations should be conducted on some other basis, and if so:
  - who should be the parties to the negotiations, and
  - in what manner should the negotiation process be carried out; and

- Restrictions, if any, should be placed by legislation on issues that may be included in collective agreements between the parties; and

- Restrictions, if any, should be placed in legislation on eligibility for membership in the union.

COLLEGES COLLECTIVE BARGAINING COMMISSION

EXECUTIVE SUMMARY

This reports on collective bargaining in Ontario's twenty-two Colleges of Applied Arts and Technology. The terms of reference of the Commission were to examine this system and make recommendations to the Minister for ways and means by which the process could be made more effective. Within this broad mandate, the Commission examined a variety of issues relating to the structure and process of negotiations, the parties to negotiations, eligibility for membership in the bargaining units, restrictions on the scope of collective bargaining, and contract administration at the provincial and college levels.

METHOD

Briefs were requested and received from the various stakeholders in the college system including the Council of Regents (COR), the Ontario Public Service Employees Union (OPSEU), the Association of Colleges of Applied Arts and Technology of Ontario (ACAATO), and its Committee of Presidents, and other individuals and groups with some association or involvement with individual colleges and the college system. Briefs were also received from other organizations, associations, and individuals in response to public advertisements for input to the Commission.

The history of colleges collective bargaining in Ontario was analyzed and other college systems in Canada, the United States, and the United Kingdom were studied by the Commission's research staff and external researchers. In addition, various studies on selected aspects of collective bargaining in the colleges, such as dispute resolution mechanisms and the locus of bargaining, were commissioned.

There was extensive consultation with the principal parties in collective bargaining, other stakeholders, and with members of the college community and the general public.

ISSUES

Analysis of the history of collective bargaining in the colleges and the various research studies conducted by and for the Commission identified the following issues:

- There is a basic misunderstanding about the role and practice of collective bargaining in the **governance** structure of the colleges which impedes the development of a constructive collective bargaining relationship.
- The uncertain and ambiguous **role of the government** in collective bargaining in the colleges creates confusion and delay in negotiations.
- The inappropriate designation of the Council of Regents as the **bargaining agent** for the colleges contributes to this delay, reduces the sense of ´ownership´ of the agreements by the colleges, and separates the responsibility for contract negotiations and administration.
- The way in which the colleges, under the direction of the Council of Regents, **organize and conduct** negotiations and contract administration results in a failure to confront recurrent issues and deal with them in a logical and rational fashion.
- The limited ability and willingness of the parties to deal with local issues at the college level, because the **locus of bargaining** is at the provincial level, contributes to complex provincial negotiations and failure to resolve local issues at the college level.
- The **information** needed to conduct negotiations on a rational basis and to monitor the administration of the resulting agreements is grossly inadequate.

- The **bargaining process** established under the CCBA[1], specifically the timelines and required procedures with respect to strike and last offer votes, impedes and complicates collective bargaining.

- The **exclusions** from bargaining units of large groups of employees denies them fundamental collective bargaining rights and complicates negotiations for organized employees because of the threat that this poses to their job security and working conditions.

- There is no reasonable basis for continuing to exclude **superannuation** from the scope of collective bargaining.

- The **negotiating position** taken by OPSEU, and specifically the claim that all teachers perform similar functions and should be subject to identical terms and conditions of employment, further complicates and delays negotiations.

- The **interpersonal behaviours** of those who have been actively involved in the collective bargaining process, specifically those involving the academic staff at both the provincial and local levels, detract from the development of a constructive and mature bargaining relationship.

RECOMMENDATIONS[2]

The following recommendations are designed to improve the effectiveness of collective bargaining in the colleges, consistent with the rights of individuals to participate in the collective bargaining process:

- **Colleges Collective Bargaining Act:** There should continue to be special legislation covering collective bargaining but the Act should be significantly amended;

- **Government Involvement in Bargaining:** The government should limit its involvement in collective bargaining to participating with the colleges in a process of mandate setting through a modified framework of fiscal management and control. It should not be a participant in collective bargaining and should avoid being drawn into it.

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[1] Colleges Collective Bargaining Act, R.S.O. 1980, c. 74.

[2] This is a brief summary of the recommendations made in the report, not a comprehensive list of those recommendations.

- **Locus of Bargaining:** Bargaining should continue to be done at the provincial level but local bargaining should be statutorily protected and encouraged;

- **Colleges Employee Relations Association:** The bargaining agent for the colleges should be an employers' association, provisionally entitled the Colleges Employee Relations Association (CERA). This should comprise the twenty-two colleges as corporate entities.

- **Colleges Employee Relations Directorate:** The Colleges Employee Relations Association should employ a Colleges Employee Relations Directorate (CERD) to conduct negotiations, provide assistance to the colleges in employee relations matters, process grievances with system-wide implications, and consult with the non-organized staff association(s) on terms and conditions of employment.

- **Part-Time Staff:** Sessional academic staff should be included in the current academic bargaining unit. Part-time support staff who work seven or more hours a week should be included in the current support staff bargaining unit. Other academic and support staff who are not placed in the current bargaining units should be allowed collective bargaining rights on a province-wide basis.

- **Bargaining Process:** The contract expiry date should be negotiable, the strike vote should be called at the union's discretion, and there should be a vote on the employer's last offer called at the employer's discretion. The role and timing of fact finding should be modified so that it takes place closer to a potential strike or lock-out.

- **Contract Administration:** System-wide grievances should be processed at the CERA level. College personnel should be trained in matters relating to contract administration and the human resource management function should be emphasized and upgraded within the colleges.

- **College Relations Commission:** The College Relations Commission should be given the resources to carry out its mandate properly, including an enhanced data gathering and information analysis role and the offering of programs in preventative mediation and relationship by objectives to the colleges. Its mandate should be expanded to include all quasi-judicial functions relating to collective bargaining in the colleges and it should be adequately funded to fulfill this mandate.

IMPLEMENTATION

This report should be released to the public and a short period of consultation should be entered into with the Council of Regents, OPSEU, ACAATO, and the Committee of Presidents of ACAATO. Following such consultations, legislation should be prepared and introduced. The discussion of integration of sessional and part-time support staff into the bargaining units should proceed concurrently with legislative action.

ACKNOWLEDGEMENTS

I would like to take this opportunity to acknowledge the contributions of a number of people without whom it would not have been possible to complete this report.

Charles Pascal, Laura Barr and the other members of the Council of Regents made valuable inputs to the Commission, and Terry Pitre always responded promptly to requests for information.

James Clancy, Andy Todd, and Andre Bekerman of OPSEU, together with the chairs and vice chairs of this year's CAAT academic (Bill Kuehnbaum and Paddy Musson) and support staff (Jay Jackson and Elizabeth Rose) bargaining teams, prepared thorough briefs and met on many occasions with myself and the Commission's staff. I am particularly grateful to Bob Hebdon and his research staff, who provided useful supplemental data when requested.

The Association of Colleges of Applied Arts and Technology of Ontario (ACAATO), under the chairmanship of Donald Clune, submitted a thorough brief and organized several important meetings with boards of governors and, through its Committee of Presidents and Executive Committee, with other administrative staff in the colleges. Fred Hamblin, the Executive Director of ACAATO was instrumental in arranging such meetings and I have also drawn heavily on his knowledge of the early days of the college system.

I was impressed with the active involvement of the Provincial Administrative Staff Association, led by Eugene Gillies, in the conduct of the Commission. They submitted a fine brief and participated actively in the public meetings that the Commission conducted.

The College Relations Commission, particularly Ed Aim, Bob Field, and Mary Nensey, were available, with tolerant good nature, to address the many requests for information that I had.

I also depended on the inputs of many people who had considerable experience in collective bargaining in the college system. I have benefitted from the insights of Angelo Pesce, Paul Cavaluzzo, Doug Grey, Diane Schatz, and others who offered their perspectives and opinions. Those who have been fact finders and mediators in this system - including Graeme McKechnie, David Whitehead, and Norman Bernstein - provided particularly valuable inputs. Others who conducted research for the Commission, including John Dennison, Mark Thompson, Don Carter, Marlene Cano, Joseph Rose, Michael Monty, Ann Francescon, Brad James and Greg Long, also contributed substantially to the Commission's analysis. If I have not always followed their advice, I'm sure they will understand, even if they do not completely forgive me.

Two major contributions to my work were the studies of the college system conducted by Walter Pitman and the Instructional Assignment Review Committee chaired by Michael Skolnik. Without these forays into the field of collective bargaining in Ontario's colleges, my own work would have been much more difficult.

The staff of the Ministry of Colleges and Universities provided invaluable assistance. Ian McArdle and his staff in the Staff Relations/Benefits Unit as well as John Humber, Elisabeth Scarff and Brian Wolfe of the College Affairs Branch responded to many requests for information, as well as providing the necessary assistance for administration. Del Bell helped with advice and assistance concerning the communications for the Commission, and my thanks also go to David Lyon and Donna Papayannis, of the

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Wally Gorchinsky and the staff of the Human Resources Secretariat were always willing to spend time educating me in the broader subject of public sector bargaining and I must thank them for their expert inputs and opinions.

Alan Adlington, the former Deputy Minister of Colleges and Universities and Tom Brzustowski, the current Deputy Minister, provided both support and encouragement, and Susan Ackler arranged prompt access to them when requested. In particular, my thanks go to Ralph Benson, the Assistant Deputy Minister who was my main contact with the Ministry; he presented the government's perspective without ever trying to undermine the independence of the Commission.

Finally I must thank the staff of the Commission. Bill Marcotte was an exceptional research director who trod the fine line of organizing and presenting research, without ever forcing his conclusions on me. Nadine Hayes made the Commission run, prepared endless summaries of research reports and briefs, and ruthlessly edited my writing. Agnes Tai, our secretary, typed, retyped, and retyped flawlessly.

Having made these acknowledgements, this was a one-person commission ... which means that the responsibility for this report is entirely mine.

Jeffrey Gandz
December 31, 1987

1

INTRODUCTION

This is a report about collective bargaining in Ontario's twenty-two Colleges of Applied Arts and Technology. Its purpose is to review the experience of collective bargaining in the colleges over the last twenty-two years and to make recommendations which will improve the effectiveness of the collective bargaining system. Within this overall objective, the report addresses specific issues relating to the structure and process of negotiations, the parties to negotiations, eligibility for membership in the bargaining units, restrictions on the scope of collective bargaining, and contract administration at the provincial and college levels.

The Commission had one overall objective in mind in doing the analysis and framing the recommendations made in this report. This was to improve the collective bargaining process so that the colleges can achieve their primary mission - the development and delivery of high quality, reliable, education and training for residents of Ontario. To do this, the collective bargaining system must operate in a way which:

- does not result in frequent strikes or lock-outs;
- does not consume excessive amounts of time, money, and other resources in negotiations and contract administration;
- results in constructive relationships between the parties in collective bargaining which allows them to communicate well, resolve their common problems and reach reasonable compromises when faced with conflicts of interest;

> respects the rights and interests of all the stakeholders in the college system, including students, staff, employees, administrators, and the taxpayers.

1.1 THE COLLEGE SYSTEM

Ontario's network of Colleges of Applied Arts and Technology was established in 1965 and currently consists of 22 separate colleges, with 96 campuses, in more than 60 cities and towns.[1] The colleges have an enrollment of approximately 110,000 full-time and 715,000 part-time students engaged in courses such as Mathematics and English, designed to upgrade basic education, or to provide occupational skills in areas as diverse as electronics technology, cooking, and air traffic control. Over 27,000 students graduated from college programs in 1986, compared with 16,800 some ten years earlier.

The college system is funded primarily by operating grants from the province (approximately $624 million in 1987/88), and revenues from programs purchased by the provincial Ministry of Skills Development ($99 million in 1987/88) and the federal government ($167 million in 1987/88). Student fees account for 10-15 percent (approximately $95 million in 1985/86) of total college revenues and are regulated by the province. In addition, the provincial government spent almost $30 million on equipment and new capital projects in the 1986/87 year.

The colleges work with over 5,500 companies to set up and run training programs designed to upgrade the skills of employees. The close relationship with industry enables the colleges to remain relevant and to develop programs to meet the continually changing needs and requirements of the community and the workplace.

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[1] Backgrounder. Ministry of Colleges and Universities, 1987.

1.2 BACKGROUND TO THE REPORT

This report has been developed against a backdrop of continuing problems in collective bargaining in the colleges, changes in governance in the college system, and changes in the social, economic, political and technological environment within which the colleges operate. Specifically:

- The role of the Council of Regents (COR) has changed from executive to advisory. This means that the current executive role of the COR in collective bargaining, as defined in the Colleges Collective Bargaining Act[2] (CCBA), is obsolete and there must be a new bargaining agent for the colleges.
- There is a clearer recognition of the need to move toward a more collegial form of governance in the colleges. This has already begun with the recent introduction of college councils.
- Colleges are significant employers of part-time academic and support staff, many of whom work under terms and conditions which are significantly inferior to those of full-time staff. The CCBA effectively removes the opportunity for many such employees to organize and be collectively represented by a union. Such disparity is clearly against prevailing trends in social policy.
- The CCBA specifically excludes superannuation from the collective bargaining agenda. At a time when major changes are taking place in the whole field of pensions, such an exclusion requires reexamination.
- The CCBA also excludes other people from the bargaining units, such as those involved in budgetary matters as well as department chairs. These exclusions are quite extensive and may be either unwarranted or even dysfunctional for the collective bargaining process.
- While the record of strikes and lock-outs is not extensive, the Council of Regents and the Ontario Public Service Employees Union (OPSEU) have demonstrated a chronic inability to conclude

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[2] Colleges Collective Bargaining Act, R.S.O. 1980, c. 74.

> collective agreements in the academic bargaining unit within a reasonable amount of time and without excessive reliance on third-party intervention, last offer received and strike votes. Such protracted bargaining has been time-consuming and has detracted from the development of the mature and constructive collective bargaining relationship needed to accomplish the educational mission of the colleges.

1.3 METHODOLOGY

In preparing this report, the Commission consulted with all concerned stakeholders in this system. Research studies were commissioned from experts in the fields of collective bargaining and educational administration. The Commission's staff, assisted by staff from the Ministry of Colleges and Universities and the Ontario Public Service Employees Union, conducted additional studies into various aspects of collective bargaining in the college system.

1.4 OUTLINE

The report begins with a brief description of the conceptual framework which has guided the Commission's investigations, analyses, and recommendations. This is followed by a methodology chapter, in which the process followed by the Commission, the inputs received from stakeholders and outsiders, and the iterative consultative process are described. The ensuing chapter lays out, in some considerable detail, the history of collective bargaining in the colleges from their formation, some twenty years ago, to the present day. This is followed by a brief chapter which analyzes this history, and defines key issues to be addressed by the Commission in its recommendations.

Each of these issues is explored in greater depth in the next ten chapters and recommendations are made where appropriate. These recommendations are of two types. First, there are specific recommendations for substantial and significant amendments to the Colleges Collective Bargaining Act (CCBA).

Second there are recommendations addressed to the parties to collective bargaining suggesting steps that they should take to improve the collective bargaining structure and process. The next chapter identifies key issues in the implementation of these recommendations. This is followed by a few concluding comments in a final chapter.

1.5 EXPECTATIONS

There are no simple, quick fixes to all of the problems in collective bargaining in the colleges. The problems which have developed have been many years in the making. The relationships which exist today have their roots in the actions and reactions of the parties in the past. The recommendations made in this report are designed to improve collective bargaining over the long haul but they require trade-offs to be made. Ideal-type solutions - which might have been practical if a new collective bargaining system was being designed from scratch - have sometimes been rejected in favour of more pragmatic approaches which are capable of being implemented.

The tone of this report is intended to be cautiously optimistic. Optimistic, because there are actions which can be taken to improve this system; cautious, because industrial relations systems are inherently complex and many interactive variables influence the outcomes.

2

CONCEPTUAL FRAMEWORK

> *"I'm a firm believer in collective bargaining... The only trouble is that after thirty years of watching it at close range... I am not sure I know what it is."*

This candid admission by John Dunlop,[1] the acknowledged dean of North American industrial relations, was made over twenty years ago and it still haunts those who try to develop comprehensive models of industrial relations systems.

2.1 THE EFFECTIVE INDUSTRIAL RELATIONS SYSTEM

Collective bargaining is a term that describes many activities and processes relating to the certification of bargaining units by trade unions, the negotiation of collective agreements between those unions and employers, and the administration of the ensuing agreements. That much is quite simple. Where it gets difficult is the point at which the concept of ´effectiveness´ is considered.

The reality is that there are many stakeholders in the collective bargaining process in the colleges including students, academic and support staff employees, administrators, the firms and other organizations which employ the graduates of the colleges, and the government as the representative of the taxpayers. All of these stakeholders have legitimate interests in the outcomes of collective bargaining and perceived rights and expectations which go along with those interests. Sometimes these interests are compatible; everyone wants to have a stimulating and progressive educational environment, for example. Sometimes, however, the interests are incompatible. For example, the academic staff may want to teach fewer hours and the government may want to control the cost of education while maintaining full accessibility.

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[1] R. Raskin, and John Dunlop, "Two Views of Collective Bargaining", in Challenge to Collective Bargaining, ed. Ulman (New Jersey: Prentice Hall, 1967), p. 155.

The 1984 strike among the academic staff in the colleges is one example of how an outcome of collective bargaining might affect different stakeholders in different ways. To the union and many employees in the college system this was a ´good´ strike because it resolved many serious workload issues, made the government inject considerable amounts of money into the system, and was achieved without significant loss of income by the strikers. To administrators the workload clause which was developed in the next set of negotiations, partly in response to the strike, represented significantly more work and complexity. To the students at that time, the strike was upsetting and very annoying; students today benefit from smaller class sizes and lower student/teacher ratios. To the taxpayer the eventual settlement was very expensive but future taxpayers may benefit from the improved funding which went into the colleges as a direct or indirect consequence of the dispute.

Clearly, any individual´s idea of what constitutes an effective industrial relations system depends on that person´s preferences as well as some overall concept of what is good for all the stakeholders in the system. This is a combination of healthy self-interest and socially-responsible altruism. In contrast to this individual orientation, this Commission has approached its task from a public policy perspective. This perspective has two main requirements: first, that an effective collective bargaining system in the colleges must support or at least not interfere unduly with the educational mission of the colleges; second, that the effective system should balance the interests of all of the stakeholders in a fair and equitable manner. With this approach it is not possible to say that a system which bans strikes is fair if it does not provide a way that employees' genuine concerns about job security, workload, or other terms and conditions of employment can be properly addressed. Conversely, a system which only addresses these concerns but which results in a large number of strikes or lock-outs, thereby jeopardizing students' education and training, could not be viewed as effective.

This public policy perspective leads to the Commission's definition of an effective industrial relations system which is couched in terms of desired **outcomes** of collective bargaining. These are:

- the negotiation of collective agreements without excessive reliance on third parties or frequent strikes and lock-outs;
- the resolution of recurrent problems experienced by the parties in their working relationships at provincial and local college levels;
- the development of more constructive relationships between the parties to collective bargaining;
- cost-effective bargaining which does not require excessive utilization of resources which could be better used in the pursuit of educational objectives;
- respect for the interests and rights of all stakeholders in collective bargaining including employees, students, administrators, unions, and the government as the taxpayers' representative.

2.2 THE FRAMEWORK OF THE STUDY

There have been several excellent attempts to develop comprehensive models of industrial relations systems[2] and these

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[2] There are several comprehensive models of industrial relations systems in the literature including: A.W.J. Craig, The System of Industrial Relations in Canada (Toronto: Prentice-Hall Canada, 1983), pp. 1-44.;

(Footnote Continued)

models helped the Commission to develop its approach to its mandate. A really good model should specify variables and outline cause and effect relationships in precise fashion. No attempt has been made to construct such a model for this study since the relationships are too imprecise and uncertain for this type of model building. However, the conceptual framework presented in Figure 2.1 is intended to provide some form of road map so that the various issues that the Commission addresses can be viewed with some overall and broad perspective on the field of collective bargaining.

In this framework, the collective bargaining **activities** are defined as certification, negotiations, and contract administration. **Certification** is the term used to describe the process whereby a union seeks to represent a group of employees in a bargaining unit; **negotiations** are those activities required to arrive at a collective agreement between the employer or employer organization and the union; and **contract administration** refers to those day-to-day and periodic activities relating to the interpretation and application of that collective agreement.

These activities take place within a social, economic, political, technological, and legal **environment** which influences the various **outcomes** of collective bargaining. For example, when the economy is sound and social priorities favour education, it should be possible to negotiate collective agreements without strikes and lock-outs occurring. When funding to the college system is cut back, as it was in the early part of the 1980's, class sizes and faculty workloads tend to increase and this may be reflected in higher grievance and arbitration rates. Technological change can stimulate a need for new programs and cause a reallocation of resources which may threaten the job

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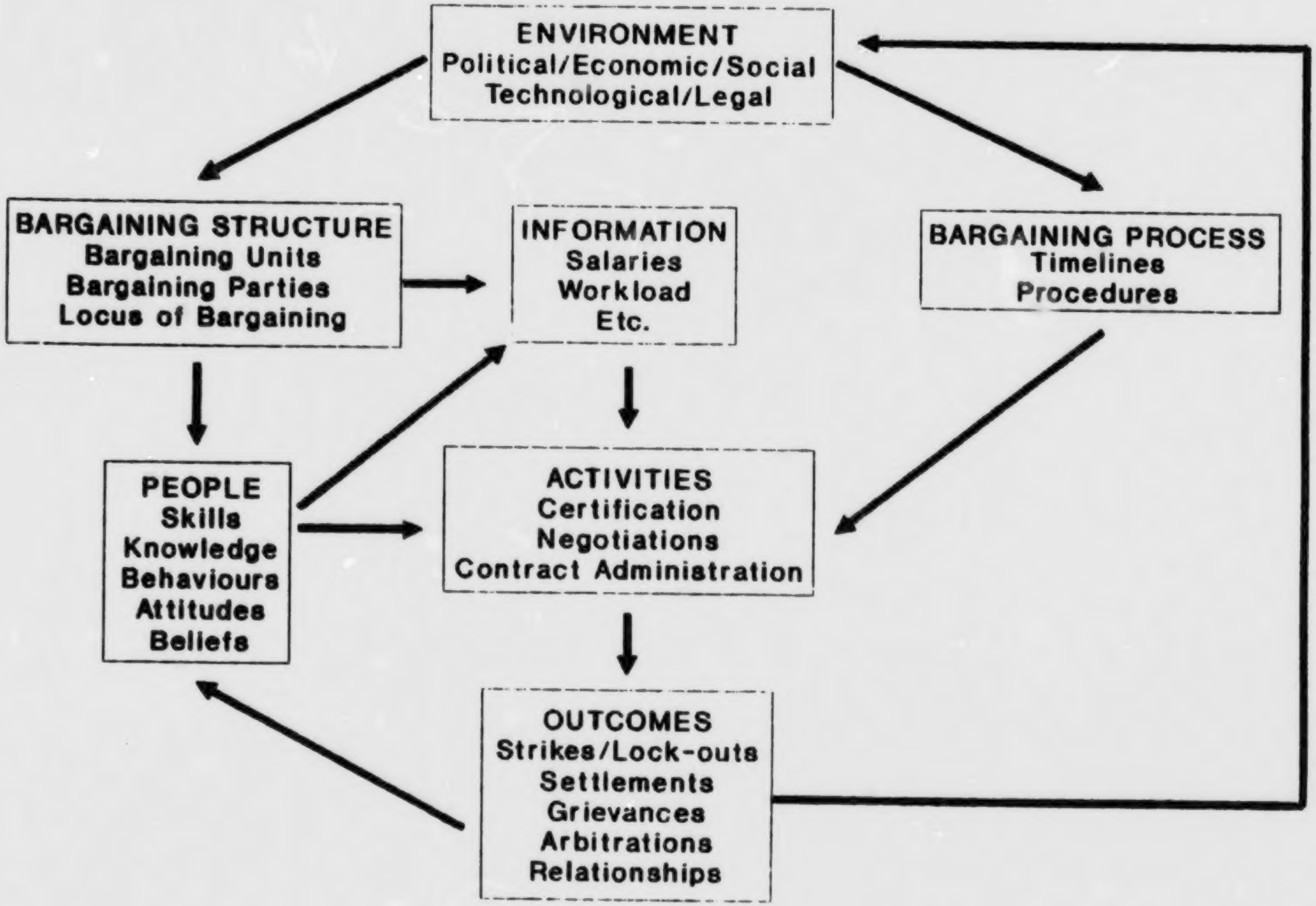
(Footnote Continued)

J.T. Dunlop, Industrial Relations Systems (New York: Henry Holt and Co. Inc., 1958);

R.E. Walton and R.B. McKersie, A Behavioral Theory of Labor Negotiations (New York: McGraw-Hill, 1965).

FIGURE 2.1
C.C.B.C. - CONCEPTUAL FRAMEWORK


ENVIRONMENT
Political/Economic/Social
Technological/Legal
BARGAINING STRUCTURE
Bargaining Units
Bargaining Parties
Locus of Bargaining
INFORMATION
Salaries
Workload
Etc.
BARGAINING PROCESS
Timelines
Procedures
PEOPLE
Skills
Knowledge
Behaviours
Attitudes
Beliefs
ACTIVITIES
Certification
Negotiations
Contract Administration
OUTCOMES
Strikes/Lock-outs
Settlements
Grievances
Arbitrations
Relationships

security of some employees. This threat may trigger negotiating demands by the union which may make it difficult to reach an agreement. Legislative restrictions may make it impossible to certify certain groups of employees; if these employees pose a threat to the job security of other groups, attempts may be made to negotiate job security provisions in the collective agreement.

Obviously, there are many factors which can influence certification, negotiations, and contract administration in both direct and indirect ways. The outcomes are usually experienced in terms of strikes and lock-outs, grievances, arbitrations, the costs of settlements, and the quality of the emergent union-management relationship. This report will attempt to identify some of these key causal relationships in the colleges and make recommendations designed to optimize the mix of desirable outcomes.

In Figure 2.1, prominence is given to four other groups of variables which affect certification, negotiations, and administration. The first of these is labelled **Structure** and refers to: the parties to negotiations, the composition of the bargaining units themselves, and the locus of collective bargaining. The second box is labelled **Process** and includes the ways in which the parties organize for and conduct certification, negotiations, and contract administration within timelines and procedures dictated by the statutory framework or negotiated between themselves. The third box is labelled **Information** and refers to the data which are available to the parties to collective bargaining, as well as to the government, and which can be brought to bear on certification, negotiations, and contract administration. The fourth box is labelled **People** and reflects the influence of the skills, knowledge, attitudes, beliefs, and personalities of the people who are involved in collective bargaining activities on the outcomes. The relationships between the variables in these boxes and the conduct and outcomes of collective bargaining will also be addressed in this report.

2.3 THE CONSTRUCTIVE COLLECTIVE BARGAINING RELATIONSHIP[3]

This concept of a mature, constructive relationship is a little like a great abstract painting ... no-one can describe it well but you know it when you see it! In essence it recognizes that in every complex social relationship, including collective bargaining, there are several types of conflict. There are **misunderstandings** about the intentions or actions of the other party; there are **common problems** which affect both parties and which have the potential to be resolved and result in both parties gaining; and there are genuine **conflicts of interest** in which the gain for one party can come only at the expense of the other. A mature, constructive relationship is one in which the parties:

- can recognize misunderstandings and communicate well enough to clear them up;
- can identify those issues which represent common problems and engage in the problem solving behaviors such as information exchange, sharing of opinions, exploration of possible alternatives, and consensus-seeking, which can maximize joint gain;
- can negotiate their conflicts of interest using strategies and tactics which do not destroy the interpersonal trust essential to the clarification of misunderstandings and solving of common problems.

The tragedy of destructive, immature relationships is that every issue is seen as a conflict of interest and the joint gain through problem solving is not realized. The benefit of the constructive relationship is that the parties get a chance to 'bake a bigger pie' rather than just compete for a slice of it.

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[3] J. Gandz and C. Beatty, Changing Relationships in Educational Bargaining, (Toronto: Education Relations Commission, 1986).

2.4 CHANGING UNION-MANAGEMENT RELATIONSHIPS

After many years of interaction in collective bargaining, the relationship between the parties usually becomes institutionalized and embedded in the culture, structure, policies, and practices of both the union and management groups involved in the process. Many people come to share common beliefs and values and these are reflected in the ways in which they interact in bargaining. If change is to occur, these behaviours and attitudes must be unfrozen, changed, and the emergent, desired behaviours must be stabilized.

No-one should hold any illusions about how difficult it is to change union-management relationships. People resist change for many reasons: they fear loss of position, status, security, or disruption of traditional social relationships; they may be ideologically opposed to the concept of cooperation; they may question their own abilities to exert influence rather than exercise power to achieve what they want; they may simply disagree that cooperation is the best tactic to achieve their goals.[4] This resistance to change has led to studies of the conditions which may be necessary to change union-management relationships from adversarial and destructive to cooperative and constructive.

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[4] Paul R. Lawrence, "How to Deal with Resistance to Change", Harvard Business Review (May-June 1954), p. 49-57; G. Watson, "Resistance to Change", in The Planning of Change, eds. Benne and Chin (New York: McGraw Hill, 1969); A. Zander, "Resistance to Change - Its Analysis and Prevention", Advance Management, 15, 1 (1950); K. Lewin, "Frontiers in Group Dynamics: Concept, Method and Reality in Social Science", Human Relations, 1, (1947), 5-42.

In his highly influential book on industrial relations, Kochan[5] summarizes some basic propositions about changing established union-management relations. First, he suggests that unions and employers will be reluctant to embark on significant efforts to change their established practices unless there are strong external and internal pressures to do so. Inertia must be overcome. If things are perceived as running smoothly, there will be a reluctance to ´rock the boat.´ Both parties must see it as being in their interest to change the current relationship. Either they must perceive some potential gains or the avoidance of potential harm. Put slightly differently, there must be ´something in it for them!´

Kochan also discusses the fact that the implementation of any change involves major political risks to both union and management representatives and, for change to occur, these risks must be managed. There will likely be substantial and highly vocal factions in both groups who will oppose a move toward greater cooperation as a sell-out, or an erosion of management rights, or other undesirable consequence. These risks must be managed, with the political leaders of each group being able to anticipate and overcome them. This is a particular problem for union leaders who must walk the tightrope between appearing to be the source of the benefits for employees yet remaining uncoopted by the employer. This implies that either the employer or a third-party such as the government must be the driving force behind change so that union leaders can avoid the political risk associated with championing some change in the status quo.

For change to be accepted and institutionalized, it must deliver actual benefits. The gains must be shared in some tangible and visible way. If better cooperation results in improved working conditions, for example, it will be welcomed and the manifest success will fuel further change. If it fails to do so, or if things actually get worse, there will be regression toward the previous state. Finally, Kochan suggests that change must be integrated with the formal collective bargaining process. Efforts to undermine legitimate collective bargaining will result in opposition from unions to these changes. In the colleges, for example, moves toward collegial governance will be opposed if such governance is perceived as a substitute for collective bargaining.

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[5] Thomas A. Kochan and Lee Dyer, "A Model of Organizational Change in the Context of Union-Management Relations", Journal of Applied Behavioral Science, 12 (January 1976) p. 59-78; Thomas A. Kochan, Collective Bargaining and Industrial Relations, (Homewood, I.C.: Irwin, 1980).

3

METHODOLOGY

In fulfilling its mandate, the Commission:

- solicited the views of the major stakeholders in the college system in the form of briefs;
- examined and analyzed the history of collective bargaining in Ontario's colleges;
- examined the history and status of collective bargaining in college systems in other Canadian provinces, the United States, and the United Kingdom;
- consulted with individuals who have been involved in collective bargaining in the colleges as mediators, fact finders, arbitrators, and negotiators;
- surveyed various contract administration practices and issues in the colleges;
- held a series of public meetings in which college employees, students, and the general public were invited to participate;
- consulted with principal stakeholders following receipt of their briefs and during the process of formulating the Commission's recommendations.

Some of these activities were undertaken by the Commission's staff while others were conducted by external researchers funded by the Commission. The Commission also received excellent assistance from the research staff of the Ontario Public Servants Employees Union (OPSEU) and various departments within the Ministry of Colleges and Universities (MCU) and the Human Resources Secretariat of the government.

3.1 SOLICITED AND UNSOLICITED BRIEFS

Briefs were requested and received from the Council of Regents, the Ontario Public Service Employees Union, the Association of Colleges of Applied Arts and Technology of Ontario (ACAATO), the Committee of Presidents of ACAATO, and the Provincial Administrative Staff Association. Despite repeated requests, the Ontario Federation of Students and the Ontario Community College Student Presidents Association did not submit briefs to this Commission.

The Commission advertised for briefs from the general public and received a number from people directly involved in the college system and others with just peripheral involvement. Individual college administrations and some locals of OPSEU also submitted briefs to the Commission. A list of those submitting briefs is attached as Appendix IV.

3.2 INTERNAL RESEARCH PROJECTS AND ACTIVITIES

The staff of the Commission developed a history of collective bargaining in the colleges and a detailed clausal analysis of the evolution of the academic and support staff agreements. Other internal research was carried out with assistance from officials in the Ministry of Colleges and Universities in the areas of funding, pensions, and costing models.

The Commission gathered information on collective bargaining in colleges in the United States and the United Kingdom for comparative purposes. Relevant literature in the fields of educational administration and collective bargaining was also reviewed.

Finally, the Commission designed and developed two survey instruments which were distributed to the twenty-two colleges. One survey was entitled 'Human Resources Management' and gathered information about the organization and staffing of human resource management departments at the college level. The second survey, entitled 'Contract Administration' was used to gather information about grievances and complaints arising from the academic and support staff units under the 1985/87 collective agreements including the numbers of grievances and complaints, type of grievances, settlement rates as a result of the grievance procedure, arbitrations, and workload dispute resolutions.

3.3 EXTERNAL RESEARCH PROJECTS

Nine projects were contracted out by the Commission to gather information and expert opinion on various matters and issues.

Don Carter, Director of the Industrial Relations Centre at Queen's University and former Chairman of the Ontario Labour Relations Board and Marlene Cano, currently a member of the law faculty at the University of Ottawa/Universite d'Ottawa provided a report on "Collective Bargaining Status of Part-Time Employees in Canada: The Implications for Ontario's Colleges".

John Dennison, Professor in the Department of Administrative, Adult and Higher Education at the University of British Columbia known for his research and writings on community colleges provided a report entitled "Collective Bargaining in Canada's Community Colleges".

Brad James, a graduate student in the Masters in Industrial Relations program at the University of Toronto conducted a literature review and analysis of collective bargaining by employers' associations.

Graeme McKechnie, Professor of Economics at York University and a third-party neutral in public and colleges education collective bargaining, was commissioned to report on the need for separate and discrete legislation governing collective bargaining in the colleges, the role of the College Relations Commission and the matter of the scope of negotiable matters under the Colleges Collective Bargaining Act.

Michael Monty, a teaching master in the Radio and Television Department at Seneca College prepared a report and videotape based on interviews with faculty, support staff, and administrators. This report explored, in a qualitative sense, their perceptions of, and attitudes toward, collective bargaining in the colleges.

Joseph Rose, a Professor of Industrial Relations at McMaster University and a recognized authority on the subjects of dispute resolutions mechanism in labour relations in Ontario provided a report assessing the efficacy of current dispute resolution mechanisms available under the terms of the Colleges Collective Bargaining Act.

Mark Thompson, Professor of Industrial Relations at the University of British Columbia and researcher and writer on community colleges took on the task of providing a theoretical perspective on the topic of collective bargaining in a multi-employer structure in the public sector.

Ann Francescon, a Professor of Management Science at The University of Western Ontario's School of Business Administration, studied the implications and complexities of the double-majority voting procedure applied to decision-making and contract ratification in the colleges.

Greg Long, a graduate of Osgoode Hall, researched the type of legislative provisions required to set up an employers' association.

These studies are included in a separate volume as Appendix VI of this report.

3.4 CONSULTATIONS

Formal and ad hoc consultations were held with parties who have a vested interest in colleges' collective bargaining including the presidents of the colleges, chairs and vice-chairs of the boards of governors, and various administrative personnel involved with academic and support staff management. There were many consultations with officials from OPSEU and the academic and support staff bargaining teams. The Commission also consulted with numerous experts in industrial relations, including many with first-hand knowledge and experience of collective bargaining in Ontario's colleges as negotiators, fact finders, mediators, and arbitrators.

In addition, public sessions were held in five separate locations in the province after public notice of these sessions was given sufficiently in advance for interested groups or individuals to meet with the Commissioner. Both oral and written submissions were received. A list of those who participated in the public meetings is presented in Appendix IV.

The Commission also consulted with staff from the Ministry of Colleges and Universities who either possessed information pertinent to labour relations and collective bargaining in the colleges or who were engaged in specific areas of data gathering and analysis for policy making or policy implementation.

As well, informal consultations were conducted with staff members of the Colleges Relations Commission, primarily in regard to data gathering and analysis matters. The purpose of these discussions was to gather information pertinent to negotiations under the Colleges Collective Bargaining Act.

4

THE HISTORY OF COLLECTIVE BARGAINING IN THE COLLEGES

"Those who cannot remember the past are condemned to repeat it" - Santayana.

This chapter presents a concise history of the system of employee relations in the Colleges of Applied Arts and Technology in Ontario. Following a brief description of the inception of the colleges in the late sixties, the context, structure, process, and conduct of collective bargaining is analyzed under three statutory frameworks: the Public Service Act[1], the Crown Employees Collective Bargaining Act[2], and the current statute, the Colleges Collective Bargaining Act.[3] A brief summary outlining the key events is presented in Figure 4.1. Finally, a brief history of salary trend data and funding in the college system is presented.

4.1 THE INCEPTION OF THE COLLEGES

The rapid economic growth and increased rate of technological change in Ontario in the late fifties and early sixties resulted in a shortage of educated and skilled human resources.[4] The provincial government studied the educational requirements of the provincial economy and how the current post-secondary

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[1] Public Service Act, 1961-62, c. 121.

[2] An Act to provide for Collective Bargaining for Crown Employees, 1972, c. 67.

[3] Colleges Collective Bargaining Act, R.S.O. 1980, c.74

[4] For an extensive discussion of the inception of Ontario's college system see: Frederick A. Hamblin, "An Analysis of the Policy Formulation Process Leading to the Establishment of the Colleges of Applied Arts and Technology of Ontario", (Doctor of Education thesis, University of Toronto, 1984).

FIGURE 4.1

CHRONOLOGY OF KEY EVENTS

Colleges created by amendment to the *Department of Education Act*	June, 1965
Colleges ordered to bargain under the provisions of the *Public Service Act*	December, 1967
First Support Staff Agreement under the *PSA*	1968/70
CSAO elected as bargaining agent for academic unit	March, 1971
First Academic Staff Agreement under the *PSA*	1971/73
Crown Employees Collective Bargaining Act	December, 1972
First Support Staff Agreement under *CECBA*	1974/76
First Academic Staff Agreement under *CECBA*	1973/75
Colleges Collective Bargaining Act	July, 1975
First Support Staff Agreement under the *CCBA*	1976/77
First Academic Staff Agreement under the *CCBA*	1976/77
Support Staff Strike	January, 1979
Academic Staff Strike	October, 1984
Instructional Assignment Review Committee (Skolnik)	1985
The Report of the Advisor to the Minister of Colleges and Universities on the Governance of the Colleges of Applied Arts and Technology (Pitman)	1986
Colleges Collective Bargaining Commission	1987

institutions which were currently providing education and skills training below university level could redress this shortage. It also investigated initiatives in post-secondary education which were being undertaken in Canada's other provinces, the U.K., and the rapidly expanding Californian educational system.

There were several models presented to the government of how the institutions could best be restructured to address the skills shortages. One influential presentation was from the Committee of Presidents of the Universities in Ontario. Its report presented an organization and a mandate for a new college system based on the current Trades and Technical Institutes. Claude Bissell, the chair of the Committee of Presidents and President of the University of Toronto, stressed the need for a "*college system*" rather than the "*system of colleges*" found in the U.S., which he described as "*confused*". The presidents suggested that the Ontario college system should exhibit "*differentiation of function, student mobility, non-directive centralization, academic participation, and a capacity for self-renewal*"[5]. They also emphasized a strong vocational and technological basis so that the colleges would not become pseudo universities.

Through what Ontario's premier, John P. Robarts, called a "*deliberate alteration of the educational structure*" the government developed a twofold goal for lower-level skills training: for the population there was to be equality of access, and opportunity for individual development not offered by the universities; and, for society, there was to be adequate facilities available for the education and training of craftsmen, technicians, and technologists.[6]

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[5] Ibid., p. 205.

[6] Hon. William G. Davis, Statement by the Minister in the Legislature, May 21, 1965, in Ontario Council of Regents for Colleges of Applied Arts and Technology, "Guidelines for Governors: Colleges of Applied Arts and Technology", August, 1972, Appendix A, p. 23.

On May 21, 1965, the government introduced a Bill to amend The Department of Education Act[7] which established the Colleges of Applied Arts and Technology as a college system which was to be occupationally-oriented, sensitive to the needs of the local community, and easily accessible to all who wanted to upgrade their education and training. They were to service full-time and part-time students in both day and evening courses, be open to adults and youth, and offer upgrading and updating for either employed or unemployed persons. They were not to include university parallel courses, but there would be liberal arts courses offered. Staffing was expected to come from industry and commerce, as well as from the secondary school and university systems.

The Bill received Royal assent on June 22, 1965. The Minister retained the right to establish, name, maintain and conduct the colleges, and appoint the Council of Regents, who would provide the co-ordination of efforts. He was also responsible for the granting of certificates and diplomas, the establishment of program admission requirements, the setting of fees, and the preparation of the qualifications and conditions of employment for faculty. Each Board of Governors was to be appointed from the local community, and would reflect the interest of the community. The Board was to be the corporate entity which would hire those necessary to run the college.

The government wanted to proceed quickly and chose to fund the system centrally, with no tax levy at the local level. Other revenue was to be in the form of fees for the students' tuition, federal funds and service agreements at the college level. The administering agency was the (then) Department of Education through the newly reorganized Technological and Trades Training

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[7] An Act to amend The Department of Education Act, R.S.O. 1965, c. 28.

Branch in the Department, the central authority for the existing Institutes of Technology and Ontario Vocational Centres (OVC).

These institutes were approximately 20 years old and serviced approximately 12,000 students. The program offerings in the Institutes of Trades and Ontario Vocational Centres reflected local demand; some offered certificates of trades, others were apprenticeship programs, and others were upgrading courses which provided the necessary prerequisites for the other program offerings.

The seven Institutes of Technology which were operating in 1965 became one university (Lakehead), one Institute of Technology (Ryerson), and four Colleges of Applied Arts and Technology: Northern, Mohawk, Algonquin and St. Clair. The two Toronto Institutes of Trades merged and became George Brown College; the London OVC became Fanshawe College; the OVC in Sault Ste. Marie became a campus of the new Cambrian College in Sudbury; and, the Ottawa OVC merged with the Ottawa Institute of Technology to become Algonquin College.

The first new college to be established was Centennial in 1965. The others followed very quickly. The last two colleges to be established were Canadore and Sault, which were split off from Cambrian in 1972. Current enrollments in each college are shown in Figure 4.2.

4.2 COLLECTIVE BARGAINING IN THE COLLEGES

When the Colleges of Applied Arts and Technology were created in 1965, the widely-held assumption was that collective bargaining would take place under the Ontario Labour Relations Act (LRA),[8]

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[8] Labour Relations Act R.S.O. 1960, c. 202.

FIGURE 4.2[1]
TOTAL ENROLLMENT[2]
FROM
MID-TERM ENROLLMENT SURVEY
(as of November 1, 1986)

Algonquin	9,725
Cambrian	3,551
Canadore	2,361
Centennial	7,210
Conestoga	4,249
Confederation	2,899
Durham	2,902
Fanshawe	7,019
George Brown	8,774
Georgian	4,086
Humber	9,763
Lambton	1,498
Loyalist	2,469
Mohawk	7,550
Niagara	3,647
Northern	1,642
St. Clair	4,079
St. Lawrence	4,415
Sault	1,817
Seneca	10,006
Sheridan	6,857
Sir Sandford Fleming	3,768
	110,281

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[1] Source: This figure was compiled from information provided by the Staff Relations/Benefits Unit in the College Affairs Branch of the Ministry of Colleges and Universities.

[2] Total enrollment includes post-secondary, adult training, tuition-short, and apprenticeship programs. It does not include programs from the Ministry of Skills Development.

the general labour statute in the province. College administrators and the unions who represented or wanted to represent college employees thought that negotiations would be conducted on a college by college basis.

Such was not to be the case. The colleges and unions soon found themselves negotiating under the provisions of the Public Service Act (PSA), the forerunner of today's Crown Employees Collective Bargaining Act. Much of the structure and process of collective bargaining in the colleges as it exists today, and many of the problems that this report addresses, have their origins in this unexpected turn of events and in the transition that was taking place in public sector labour relations in Ontario toward the end of the sixties.

4.2.1 The Representation Issue

As reported, the colleges evolved from the Provincial Institutes of Trades, Provincial Institutes of Technology, and Ontario Vocational Centres. Their staffs had been members of various unions, including the Civil Service Association of Ontario (CSAO), the predecessor of today's Ontario Public Service Employees Union (OPSEU), and the Canadian Union of Public Employees (CUPE). It was natural that these organizations would apply for bargaining rights on behalf of the college staff and the Council of Regents issued directions to the colleges to negotiate such local agreements.

In 1967, this scene was dramatically altered. The CSAO applied to the Ontario Labour Relations Board (OLRB) to represent the non-academic staff at Fanshawe College. In December of that year, the Board concluded that it did not have jurisdiction to order this certification since the college was determined to be a Crown agency. This ruling was upheld in the Ontario Court of Appeal and similar applications on behalf of bargaining units at George Brown, Cambrian, and Centennial Colleges were subsequently dismissed by the Board.[9] This ruling also reflected the position taken by the Council of Regents which, as intervenor in the OLRB hearings, asserted that the Board of Governors of Fanshawe College did not have the authority to bargain in relation to matters which are essential to every collective agreement[10]. This marked the first move of the Council of Regents to control and centralize the collective bargaining function.

Following this series of rulings, the CSAO approached the Council of Regents in 1968 to claim bargaining rights under the statute which covered Crown agencies, the Public Service Act. The Council recognized the CSAO as the bargaining agent for the support staff in the colleges but this action was taken without the consent of all of the colleges.[11]

The CSAO had represented faculty in some of the predecessor organizations to the colleges, and it was also the government employee representative at the Ontario Joint Council, the body established under the PSA to conduct negotiations between public employees and the government. It assumed, therefore, that it held representation rights for faculty in the new college system. But this 'right' was challenged by a newly formed, unincorporated group - the Ontario Federation of Community College Faculty Associations (CCFA) - which claimed that it represented academic employees in the colleges. The new group challenged the CSAO by applying for an injunction which required the CSAO to cease negotiations at the Ontario Joint Council for faculty members.

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[9] The background data on these events are contained in a July 25, 1969 memorandum from R.D. Johnston, Deputy Minister of the Civil Service to Dr. J.K. Reynolds, Secretary to the Cabinet, Office of the Prime Minister.

[10] OLRB, 13601-67-R, December 4, 1967.

[11] Judge Walter Little, "Collective Bargaining in the Ontario Public Service", May 1969, p. 23. Judge Little had been assigned the task of defining the structure and process of public sector collective bargaining in Ontario.

In that application, the CCFA claimed to represent 54.4 percent of the faculty in the colleges. Judge Lacourciere, in his decision of January 30, 1969 noted that the relevant sections of the Public Service Act did "*not appear to confer to [the CSAO] the exclusive bargaining right, authority or agency on behalf of the Crown employees*".[12] Based on the above, he granted the CCFA its injunction and this decision effectively halted the academic staff negotiations.

In 1969, Judge Walter Little defined the structure and process of public sector collective bargaining in Ontario. His study determined the appropriate bargaining units, as well as the appropriate government employee representative for negotiations. It was at this time that public sector bargaining began to resemble collective bargaining as it was practiced in the private sector. In the fifties and early sixties public sector bargaining had involved ´discussions´ between the government and employee representatives. Following Judge Little´s recommendations in May of 1969, ´discussions´ became ´negotiations´, and various ´memoranda of agreement´ became ´collective agreements´. Although the right to strike was denied to Ontario´s public servants, binding arbitration was reaffirmed as the final dispute resolution mechanism.

Because of the CCFA injunction, Judge Little declined to deal with the issue of bargaining unit determination for the academic unit. Instead, he recommended that an independent adjudicator determine which group would represent faculty. On July 17, 1970, in an effort to end their ongoing stalemate, the CSAO and the CCFA signed an ´offer´ made to them, apparently at the government's instigation. This offer was an agreement between the parties to hold a representation vote, pursuant to procedures under the Ontario Labour Relations Act. The vote was held on March 17, 1971.

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[12] Ibid., Appendix XV, pp. 97-99.

Because there was to be a vote, the parties were required to provide a list of eligible voters. The CSAO, the CCFA, and the Council of Regents agreed on the list of eligible voters: the bargaining unit excluded chairmen, sessional employees, and various categories of part-time employees on no other basis, apparently, than that it was common to exclude these categories of employees from bargaining. This was the way that the bargaining unit for the academic staff was determined.

Two matters of interest surround this vote. First, the CCFA had claimed that it represented 54.4 percent of faculty when it applied for the injunction. However, for this vote, it was unable to gather the requisite 35 percent support of faculty just in order to have its name placed on the ballot. The reason for this reduction was suggested, many years later, by OPSEU[13]:

> *"Until mid-summer 1971 (sic), it appeared that both parties [the CSAO and CCFA] would get the required number. Then the government transferred to the colleges, from the Ontario high schools, jurisdiction over adult training courses. This move expanded the bargaining unit and, at the same time, gave CSAO the upper hand in the representation war since many of the teachers in adult training programs were already CSAO members."*

The resulting dilution of the CCFA membership within the colleges reduced their support to the point where the CCFA's name could not be placed on the ballot, its membership having been reduced to approximately 31 percent of the newly expanded total membership.

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[13] Submission to Arbitrator Weiler by the Ontario Public Service Employees Union, 1985.

The second interesting point is the result of the vote. Because the CCFA failed to qualify to have its name placed on the ballot, the question put to voting faculty was: "Do you or do you not want the CSAO to represent you?" The CSAO won the right to represent faculty by 51 percent of the votes cast. Although a majority of voting faculty favoured the CSAO, the level of support was only the slimmest of margins, achieved in a circumstance where the alternative was no representation at all.

While it took several years for the academic bargaining unit to be defined, because of the litigation between CCFA and CSAO, there was no such problem with the support staff bargaining unit. The CSAO and the Council of Regents were able to agree that all full-time employees would be members of the support staff bargaining unit but that, consistent with the usual practice of the day, part-time employees would be excluded.

4.3 PUBLIC SERVICE ACT, 1968-1972

4.3.1 Legislative Framework for Collective Bargaining

The current structure and practice of collective bargaining in Ontario's public service bears little resemblance to collective bargaining under the Public Service Act (PSA) of 1968. At that time, the Civil Service Commission was authorized to set **all** terms and conditions of employment for public servants including salaries, benefits, vacations, criteria for recruitment, selection, and promotion - in fact anything and everything that could affect a public servant's work situation[14].

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[14] Public Service Act, 1961-62, c. 121, s. 20.

The Civil Service Commission empowered a group known as the Ontario Joint Council to negotiate with the Civil Service Association of Ontario (CSAO), the predecessor to the current Ontario Public Service Employees Union. The word ´negotiate´ is a bit of a misnomer since the Joint Council´s mandate was actually *"to study and consider"* employment matters and *"to make such recommendations to the Executive Council [of government] as may be deemed proper and advisable"*.[15]

The Joint Council consisted of an *"official"* side (three members appointed by the Government) and a *"staff"* side (CSAO representatives). There was also a non-voting chairman who controlled the agenda. Although the Chair could, technically, put any matter on the agenda concerning the terms of employment of Crown employees, the regulations under the Public Service Act prohibited ´negotiation´ in many areas such as the operation and organization of departments, job classifications, and job evaluation systems.

Various groups of employees and government departments made their cases to the Council. If the members of the Council could not agree on terms and conditions of employment, the dispute was then submitted to final and binding arbitration.

In 1968, the CSAO represented some 51,000 public employees, excluding faculty members in the colleges, employees of the (then) Workmen´s Compensation Board, the Ontario Northland Transportation Commission and the Hydro-Electric Commission of Ontario. The CSAO membership was, at that time, divided into five categories for bargaining purposes: Social Services; Operational; Scientific and Technical; Administrative; and General Services.

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[15] Order-in-Council, May 18, 1944.

As soon as it became clear that negotiations were to take place under the Public Service Act, rather than the Labour Relations Act, the CSAO sought to bargain directly with either the colleges individually, or the Council of Regents for both academic and support staff employees.

The Council of Regents, apparently motivated by a fear of excessive whipsawing within the college system[16], stepped in and took on the responsibility for province-wide negotiations with the CSAO. This was done without obtaining the unanimous approval of the boards of the colleges, and was certainly not envisaged in the original mandate of the Council of Regents.[17] There was even some suggestion that the Council of Regents did not consult with all of the colleges before taking on this responsibility.[18]

Judge Little, in his definition of public service collective bargaining, effectively froze this bargaining structure into place. His recommendations reflected his overall orientation to the structuring of the bargaining units and bargaining agents in the public sector - to reinforce the status quo.

4.3.2 Negotiations under the Public Service Act

Three support staff agreements and one academic staff agreement were negotiated under the Public Service Act. The academic negotiations, and resulting arbitration, were so protracted that the agreement was entirely retroactive and was issued after public service collective bargaining had been moved under the jurisdiction of the Crown Employees Collective Bargaining Act.

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[16] Johnston memorandum of July, 1969.

[17] Ibid.

[18] Little, p. 23.

Support Staff Negotiations

The first support staff agreement covered the period September 1, 1968 to March 31, 1970. In Article 1.01 of this agreement, the CSAO was recognized as the exclusive bargaining agent for:

> *"all non-academic employees of the colleges, save and except foremen and supervisors, persons above the rank of foreman or supervisor, employees performing duties that require the use of confidential information relating to employee relations and budgets, persons regularly employed for not more than twenty-four hours per week and persons employed temporarily during the College vacation periods".*

Prior to the first agreements, the CSAO position was that all college employees, academic and support staff, should be included in a single bargaining unit, which would then be divided into academic and non-academic groups for bargaining purposes. The Council of Regent's position favoured two separate units: one each for academic and support staff. In addition to the difference between the parties' positions on the number of units, there was also a dispute over the issue of exclusions from the support unit. However, over a period of five months, they did agree on the composition of the bargaining unit. An essential part of the agreement on the bargaining unit was the exclusion of employees working not more than twenty-four hours a week, and persons employed temporarily during the college vacation periods.

The second support staff agreement, covering the period 1970/72, was negotiated without mediation or arbitration, and contained few substantive changes.

The parties were unable to agree on various terms and conditions of employment to be contained in the 1972/74 agreement, and required binding arbitration to conclude an agreement. It was this agreement which introduced significant exclusions to the support staff bargaining unit. Prior to arbitration, the parties had agreed to exclude cooperative education students, graduates of the college employed during the twelve months following completion of their programs, and persons hired for a project of a non-recurring kind. The chairman of the arbitration panel in the 1971/73 arbitration award concerning the second support staff agreement, Judge Anderson, added an additional exclusion: temporary employees, defined as *"a person who is employed on a casual or temporary basis, unless he has been so employed continually for a period of six months or more".*[19]

The parties appear to have been greatly influenced by Judge Little's recommendations for the entire public sector when they structured these exceptions. The CSAO, however, has never accepted the proposition that such a large group of employees - perhaps as many as five or six thousand - should be prohibited from having collective bargaining rights.

Academic Staff Negotiations

As a result of the delay caused by the CCFA/CSAO representation competition, only one academic collective agreement (1971/73) was negotiated under the Public Service Act.

The major issue confronting the parties, which was anticipated by both, was the need to combine two distinct groups of faculty under one agreement. One group was drawn from various Provincial Institutes of Trades and Technology, while most of the others were from adult education departments of provincial school boards. Each group had its own working conditions and benefits plans, and these were distinct enough to raise difficulties in fashioning a single set of agreement provisions that would be fair to all faculty employees.

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[19] Colleges of Applied Arts and Technology and The Civil Service Association of Ontario (Inc.). (1972). Anderson.

The academic staff negotiations were difficult from the start, with both mediation and arbitration ultimately utilized in establishing the first agreement. The mediator made some progress with the parties between July 1971 and January 1972, but a number of important issues remained unresolved when arbitration hearings commenced in February 1972 before a board chaired by Judge Anderson. Following the conclusion of the hearings, an award was issued on April 28, 1972, which was followed by a *"clarification and interpretation"* of the initial award on July 31, 1972. A listing of the unresolved issues before the board is indicative of the problems which confronted the parties[20]:

- *Recognition*
- *Relationship*
- *Association Deductions*
- *No Strike - No Lock-Out*
- *Association Business*
- *Term of Memorandum*
- *Classification and Association Grievances*
- *Salaries*
- *Teaching Schedules*
- *Vacations*
- *Fringe Benefits (Insurance)*
- *Allowances*

It was left to the arbitration board to resolve one of the most fundamental issues in collective bargaining - which employees the Union should represent. The Anderson board drafted a recognition clause which excluded *"Chairmen, Department Head and Directors, persons above the rank of Chairman, Department Head of Directors, ... and teachers, counsellors and librarians employed on a part-time or sessional basis"*.[21] It defined part-time as persons teaching twenty-five (25%) percent or less of the accepted teaching load (which it was also to define in this award) and sessional teachers as people who had *"an appointment of not more than twelve months duration in any twenty-four month period"*.[22]

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[20] Ibid., p. 6.

[21] Ibid., p. 8.

In its clarification, the Anderson board also excluded persons who taught less than six hours per week. Furthermore, the board went on to establish a different treatment for what became known as partial-load employees, those who taught six to twelve hours a week, in effect specifying fundamentally different terms and conditions of employment for this group of employees.

The Anderson board also had to deal with the difficult question of workload. Very reluctantly, it prescribed workload maxima for different groupings of academic staff, but clearly expressed the viewpoint that workload was a matter that should be negotiated between the parties and not be determined through either interest or rights arbitration. The board suggested several criteria for workload, including: the nature and number of the subjects to be taught; the level of teaching and business experience of the faculty; the availability of technical and resource assistance; the necessary academic preparation; student contact; examination marking and assessing responsibilities; and size of class. The board also recommended that the range of teaching hours be from sixteen to twenty-two with a campus or aggregate average of eighteen to twenty hours per week over the academic year for the academic, post-secondary teacher. For the craft, skills, elementary, and secondary teachers, the board ordered that the range of teaching hours be from twenty-two to twenty-seven hours per week on an individual basis, and an average of twenty-four to twenty-six hours per week over the academic year on an aggregate basis.

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[22] Ibid.

The Anderson board also specified that the academic year should consist of ten months, or the aggregate equivalent (except in the case of continuous twelve month programs), and that the academic requirements and responsibilities during that period should include: teaching assignments; course preparation; student contact; examination marking; assessing responsibilities; and other assigned functions and responsibilities ancillary to teaching assignments, as well as professional development activities which had been approved by the department chairman.

The board attempted to outline both general and specific workload factors that would encourage equitability among the faculty employees, yet account for curricular differences. The board recognized that this would create anomalies and it established 'College Meetings' designed to ameliorate them. The subject matter for these meetings was to include: the local application of the agreement; clarification of procedures or conditions causing misunderstanding or grievances; other matters which were mutually agreed upon; or, a complaint by an employee that his or her individual teaching schedule was unduly onerous.

4.3.3 Discussion of Negotiations under the Public Service Act

The seeds of many of the problems currently experienced in the college system were sown in the early years of negotiations under the Public Service Act.

Locus of Bargaining

The locus of bargaining in the college system appears to have been determined by default. Once it was clear that negotiations were to take place under public sector legislation, as a consequence of the OLRB ruling, everyone - including CSAO and the Council of Regents - automatically assumed that provincial bargaining was appropriate, for no other reason than that it was **done** that way in the public sector. There was no grand design, no carefully thought out strategy, no alignment of bargaining structure with the educational strategy of the colleges.

The Anderson board's award clearly indicated that many matters should be handled locally given the extremely diverse and varied curricula in the colleges. It was with reluctance that it imposed system-wide workload provisions:[23]

> *"Each of the Colleges has a Board of Governors, and since all of them have emerged as institutions within the last five years, varying practices with relation to teachers' workload salaries and all other matters which normally fall within the ambit of collective bargaining, have been dealt with to some extent on a College basis. Thus, there is a wide variety of practices which have grown up since their inception. To this variety must be added the complexity represented by heterogeneous institutions in widely different locations each with its own institutional autonomy.*
>
> *"The Board also recognizes ... that each College should have the widest possible latitude to meet the educational requirements ... and yet at the same time set certain guidelines so that the general operational structure of the Colleges should be confined within certain general limits and the workload, salaries and working conditions should correspond as nearly as possible to some norm."*

Bargaining Agents

CSAO became the bargaining agent for support staff employees because it represented the vast majority of those employees inherited from the predecessor institutions. The academic situation was quite different, however, with CSAO gaining representation rights by only the slimmest majority of those voting.

The emergence of the Council of Regents as the bargaining agent for the colleges occurred because there was no provincial body to negotiate on behalf of the colleges when it became apparent that negotiations were not to occur under the LRA. The Council of Regents stepped into a vacuum without this being perceived as legitimate by the colleges. The reason for this lack of acceptance was obvious: the Council of Regents was a creature of the government, and not of the colleges.

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[23] Ibid., pp. 7-8.

The action taken by the Council of Regents was a breach of the industrial relations principle of aligning the responsibilities for contract negotiations and administration. The colleges were responsible for administering the agreement because they were the employers. However, the Council was responsible for negotiating the agreement and the Council was not even responsible to the colleges. This separation of responsibilities was to confound employee relations in the colleges for many years to come and persists to the present day.

It was apparent to the Anderson arbitration board that workload inequities were bound to emerge if there was a system-wide workload formula. Furthermore, the board was skeptical about the value of workload arbitration[24]:

> *"Your Board has considered the possibility of referring to a third party, final and binding arbitration with respect to this issue of individual teaching workload, but has concluded that such a matter as to whether or not an individual workload is oppressive, unfair or onerous, is one which does not easily lend itself to an arbitration process, and therefore, in the unlikely event that some complaints in this area have not been satisfactorily dealt with through the procedures outlined, the Board would expect any unresolved matters in this area would be brought up in the next round of negotiations."*

Despite this skepticism, the roots of today's workload formula can be seen in the Anderson arbitration award where, for the first time, attempts were made to explicate workload criteria.

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[24] Ibid., p. 18.

Bargaining Units

While the support staff bargaining unit and the Council reached agreement on less-than-full-time employees, their decision was heavily influenced by Judge Little's recommended exclusions. At the time, the CSAO expressed extreme concern over the large numbers of exclusions, and this long-standing opposition is reflected in the OPSEU position today when they refer to the need to "*right a historical wrong.*"[25]

The structure of the faculty bargaining unit, which was confirmed in the Anderson board arbitration, was a by-product of the conflict between the CSAO and the CCFA. It fragmented the teaching staff on the basis of workload categories and established the sessionals and partial-load teachers as the 'poor relatives'. These faculty members were, in effect, entitled to some of the benefits from collective bargaining but not others. While their remuneration rates could be negotiated, they did not receive fringe benefits, statutory pay, or vacation pay.

In retrospect, the exclusion of less-than-full-time support and academic employees from the bargaining units appears to have been made in general conformity with the prevailing practices and legislative provisions of the Ontario Labour Relations Act and the Public Service Act in place at the time. However, the anomalous treatment that led to the inclusion of the partial-load faculty remains an enigma. Unfortunately, the reasons behind this bargaining unit oddity, which has continued to the present day, were not stated in the Anderson board's award.

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[25] "Submission to the Colleges Collective Bargaining Commission" by the Ontario Public Service Employees Union, June 1987.

Bargaining Process

Both the support and academic units resorted to arbitration in the early years of bargaining. For the support staff this was not until their third agreement, but the academic unit started off the way they would continue to negotiate throughout their history. The first set of negotiations was protracted, although the seven-month time period may, in the light of subsequent negotiations, be considered breakneck speed! Extensive mediation was required, and still the Anderson board had to rule on most of the fundamental issues for the first collective agreement.

It was understandable that essential features had to be resolved through interest arbitration. The parties had to accommodate a significant number of faculty employees who were entering the colleges from two different employment streams. One group was drawn from the pre-existing Provincial Institutes of Trades and Technology and the other from public boards of education. Different work years, wage rates, benefits and vacation schemes had to be accounted for under the provisions of a single system-wide collective agreement. The bargaining between the various factions must have been as vexatious as negotiations between the Council of Regents and the Union.

Scope of Negotiations

Under the Public Service Act, the scope of negotiations was severely restricted. Union's were not allowed to strike, and there was an extensive list of 'management rights' including: the right to determine employment, appointment, complement, organization, work methods and procedures; kinds and location of equipment; discipline and termination of employment; the assignment, classification, job evaluation, appraisal, and merit systems; training and development; superannuation, as well as the principles and standards governing promotion, demotion, transfer, lay-off and re-appointment. The PSA specified that such matters would not be the subject of collective bargaining and could not come within the jurisdiction of a board of arbitration.

4.4 CROWN EMPLOYEES COLLECTIVE BARGAINING ACT 1972-1975

In December 1972, the Crown Employees Collective Bargaining Act (CECBA) replaced the Public Service Act as the legislative framework for public sector collective bargaining. This Act was greatly influenced by Little's 1969 report, "Collective Bargaining in the Ontario Public Service". Two academic agreements (1973/75, 1975/76) and one support staff agreement (1974/76) were negotiated under CECBA.

4.4.1 Legislative Framework for Collective Bargaining

CECBA contained provisions which substantially altered the practice and process of collective bargaining, although the basic structural elements - locus of bargaining, bargaining parties, scope of negotiable issues, third-party assistance, timelines and sanction prohibition - remained unchanged. Many issues such as organization, work methods, the job evaluation system, and superannuation remained non-negotiable.

Significant additions to CECBA included negotiations timelines and the establishment of the Labour Relations Tribunal and the Grievance Settlement Board. The former was designed to administer the Act, while the latter was the final process of a formalized grievance procedure. As well, CECBA provided for formal collective agreements which replaced the memoranda of understanding under the PSA.

In 1972, amendments were made to the Ministry of Colleges and Universities Act[26] which brought collective bargaining in the colleges under CECBA, and confirmed the Council of Regents as the bargaining agent for the colleges. The status of the individual colleges as the employers of academic and support staff was retained.

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[26] The amendment added a definition of the term "employee", as applied to the colleges, which specified that CECBA would apply (to colleges collective bargaining), except where inconsistent with the section, "to all boards of governors of colleges of applied arts and technology and to all employees..." in: An Act to amend The Ministry of Colleges and Universities Act, 1971, S.O. 1972, c. 114.

4.4.2 Negotiations under the Crown Employees Collective Bargaining Act

Support Staff Negotiations

The support staff unit negotiated one agreement under CECBA. The negotiations proceeded uneventfully and the final agreement contained no significant changes to its basic structure. The grievance procedure was expanded, seniority provisions were amended, and other cosmetic changes were made to the agreement.

Academic Staff Negotiations

The academic negotiations, on the other hand, were an entirely different matter. In fact, the parties were unable to reach an agreement for the 1973/75 period. Negotiations, which began under the PSA but continued under CECBA, dragged on for well over a year before the decision was made to refer all matters remaining in dispute to binding arbitration. By the time the board, chaired by Mr. Justice Willard Estey, issued its award, the agreement period had expired and the award became the basis for the 1975/76 collective agreement. In effect, the award was for a 'two-year back, one-year forward' agreement.

The wrangling between the parties even extended to the issues which were to be put in front of the Estey board. The Council took the position that the CSAO should be limited to those issues which it had originally raised when giving notice to bargain for the 1973 negotiations under the PSA. The Union took the approach that it could raise any matter it wanted, under the provisions of CECBA.

One issue raised by the CSAO was the composition of the bargaining unit. The Union wanted to erase the distinction between full- and part-time employees. However, the board ruled that amendments to the bargaining units would require a determination by the Labour Relations Tribunal since its (the board's) jurisdiction derived from CECBA and, therefore, it had no power to amend the composition of the bargaining units.

Most of the issues which had been placed before Judge Anderson's arbitration board in 1972 reappeared before the Estey board, including the composition of the bargaining unit, job security provisions such as layoffs and recalls, and a wide variety of salary and benefits matters. Without doubt, the most difficult issue was the question of workload and teaching schedules.

As had occurred in first agreement negotiations, the parties could not resolve the workload issue through negotiations. The Estey board, echoing the observations of the Anderson board, noted that this matter was difficult for the parties to resolve, let alone an arbitration board:[27]

> *"It [is] all too apparent that the diversity of subject and variety of training given in these institutions is not conducive to the development of a universal formula which, when applied to each or even most of the staff members will produce a fair and equitable distribution of workload. It is demonstrably impossible to objectively isolate a fair workload for any one of the two or three hundred staff functions in the academic staff in this bargaining unit ...*
>
> *"[W]e are satisfied that it is completely futile to attempt to erect a finite, rigid, invariable and certain table, or slide rule, which will produce a workload answer expressible of hours of teaching, hours of administrative work, student contact hours, etc....*
>
> *"In the adversarial process, it is all too easy to lose sight of the fact that both sides ... have a common goal which is the establishment of an arrangement,*

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[27] The Ontario Council of Regents for Colleges of Applied Arts and Technology and The Civil Service Association of Ontario (Inc.), (1975), Estey, (Decision), pp. 63-64A.

> *conveniently referred to as a collective agreement, under which the employer and the employee will perform their allotted duties to the general benefit of the community and without due loss of efficiency or sacrifice on either side. Equally strong on the part of the Board is the feeling of total inadequacy to the task of establishing workload standards; teaching schedules; daily, weekly and monthly workloads, and the relationship between the various kinds of workloads."*

Following a thorough examination of the workload issue, the Estey board developed ten principles for the parties to use to resolve their differences. However, they were unable to come to an agreement and, following an interim award on March 17, 1975, the arbitration board reluctantly specified workload provisions for different groups of employees.

The board recognized the need for the colleges and the CSAO to reach a bilateral resolution on these critical terms and conditions of employment rather than rely on arbitration boards to do so. It also noted, in its review of the concept of a workload formula, that a system-level bargaining structure militated against a formulaic resolution to the continuing dispute between the parties.

In a footnote to the workload provisions, the board noted that severe rigidities were being built into the agreement **with the consent of the parties themselves:**[28]

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[28] The Ontario Council of Regents for Colleges of Applied Arts and Technology and The Civil Service Association of Ontario (Inc.), (1975) Estey, (Final Award), p. 3.

> *"...the establishment of this ceiling [maximum teaching hours per year] or limitation creates a rigidity which conflicts with the other limitations imposed in this schedule. The parties, however, have proposed all these limitations and the Board responds by establishing this maximum annual ceiling, notwithstanding its effect on the other maxima."*

The board clearly expressed its own frustration with the collective bargaining process, and its award contained an admonishment to the parties. It strongly urged them to make an effort to appreciate the existence of a common goal, implying that their relationship at the bargaining table was contributing to their inability to resolve their differences.

4.4.3 Discussion of Negotiations under the Crown Employees Collective Bargaining Act

While the history of colleges' bargaining under the Crown Employees Collective Bargaining Act was of short duration, it was nevertheless a watershed era in the evolution of collective bargaining in the colleges. The issues in negotiations were similar, the support staff negotiations continued to be mature and constructive, and the academic staff negotiations were protracted and extremely difficult. However, there were sharp contrasts between CECBA and the PSA, particularly with respect to the bargaining process and the employees' rights to participate in collective bargaining.

Bargaining Agents

The Crown Employees Collective Bargaining Act recognized collective bargaining as an adversarial process through which parties, with inherently competing but not necessarily conflictful interests, seek to resolve their differences over terms and conditions of employment. The abolition of the Ontario Joint Council was inevitable in the presence of this acknowledgment. The groundwork for this development was laid in the 1966 amendment to the Public Service Act which created "*official*" and "*staff*" sides in the composition of the Council. That distinction had been absent during the previous twenty-odd years of the Joint Council's existence.

Negotiations under CECBA continued on a provincial basis between the Council of Regents and the CSAO. There was still no right to strike, as well as restrictions on negotiable issues.

The Estey arbitration award reiterated the difficulties inherent in a structure of collective bargaining which separated the responsibilities of the employer from those of the bargaining agent:[29]

> *"By a subsequent amendment (S.O.1972 c.114) to The Ministry of Colleges and Universities Act, 1971, the staff of the Colleges are deemed to be employed by the Crown in the right of Ontario as "employer"; the statute goes on to provide that the employer shall be represented on the Boards of the Colleges by persons appointed by the Ontario Council of Regents. Presumably following this line of reasoning, the Council of Regents has become, in practice, the legal representative of the employer, being the Crown in the right of Ontario, in arbitration proceedings which have heretofore taken place under the variety of statutes which relate to such proceedings. The combination of the amendments to The Ministry of Colleges and Universities Act, 1971 creates the somewhat anomalous situation where the staff are employees "employed by a Board of Governors of a college" but the employer is the Crown in right of Ontario. Thus the Council of Regents do (sic) not technically appear on behalf of the Colleges but rather on behalf of the Crown ..."*

The board again noted the confusion on the employer side when it addressed the bargaining unit:[30]

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[29] Estey, (Decision), pp. 1-2.

[30] Ibid., p. 3.

> *"The persons comprising such [academic] bargaining unit are, in the Collective Agreement and elsewhere, referred to as "academic employees of Colleges". Such designation is not entirely correct by reason of the fact that the employer, by statute, is as already mentioned, the Crown ..."*

In the board's opinion, there appeared to be deficiencies in the legislative framework in regard to both the employer and employee bargaining parties and while these inconsistencies were not fatal to the parties' actual use of the bargaining process, they did point out that the CECBA collective bargaining regime formalized the separation between the employer and the employer's bargaining agent.

Bargaining Units

Both bargaining unit determination and representation procedures were established under CECBA, with the responsibility for final determination of these matters assigned to the Labour Relations Tribunal. These statutory provisions took into account Judge Little's findings and recommendations. Of interest, is the continuation under the Crown Employees Collective Bargaining Act of the distinction made by Little between employees on the basis of their amount of work, either full-time or non-full-time.

The CSAO's position before Judge Little on bargaining unit eligibility did not distinguish between employees on the basis of full-time/less-than-full-time employment. The government position, on the other hand, did identify part-time and short-term employees, as well as certain portions of the unclassified service, and students "*as Crown employees who should be excluded from bargaining units*". Neither Judge Little's reasons for agreeing "*in general*" with the government position, nor the rationale of the government's position are revealed. It can only be assumed that the continued exclusion of less-than-full-time employees from bargaining units under the

Crown Employees Collective Bargaining Act reflected a labour relations norm of the late 1960's and early 1970's.

Third-Party Involvement

The parties to the academic agreement were unable to use the bargaining process to solve their differences in bipartite negotiations. Their use of interest arbitration meant that third parties determined the enduring features of the employment relationship. That situation was explicitly addressed by both the Anderson and Estey boards in their arbitration awards. They both saw the need for the parties themselves to resolve such differences, rather than disinterested others.

To a certain extent, it is understandable that the negotiations for the **first** academic agreement were difficult as the parties tried to integrate two major groups of academic employees under the provisions of a single agreement. However, the fact that there was an inability to resolve major provisions in the **second** agreement, despite having the Anderson board's basic structure to work with, indicates both the problems inherent in settlements dictated by third parties, and the failure of the parties to develop a constructive approach to negotiations.

Workload

The absolute ceiling placed on teaching hours per year in the academic agreement introduced a rigidity which the Estey board clearly recognized, but that the employer, at least, may not have foreseen. In subsequent chapters of this report the costs of extending collective agreement provisions to sessional and part-time employees are analyzed. Many of these very substantial costs are rooted in the existence of ceilings on teaching hours **within which** workload formulae are applied. The Estey board's comment, cited previously, was prescient!

4.5 COLLEGES COLLECTIVE BARGAINING ACT, 1975

Although there was no great dissatisfaction expressed by the parties in the colleges with the bargaining regime under the Crown Employees Collective Bargaining Act (CECBA) a new statute, the Colleges Collective Bargaining Act (CCBA)[31], was passed in 1975. This was a companion piece of legislation to the School Boards and Teachers Collective Negotiations Act (SBTCNA)[32], commonly known as 'Bill 100'.

4.5.1 The Legislative Framework for Collective Bargaining

The Colleges Collective Bargaining Act (CCBA) completely altered the process of collective bargaining in the colleges, allowing the right to strike or lock-out, subject to a rigid set of requirements and adherence to various timelines as well as significantly expanding the scope of bargaining.

The Right to Strike or Lock-out

The right to strike or lock-out was extended to the college system at the same time that it was permitted in the public education system under the provisions of the SBTCNA. The legislature's conclusions were that publicly-funded education, in the schools and the colleges, was not an essential service and, therefore, relatively 'free' collective bargaining was desirable. This was in sharp contrast to the publicly-funded hospital sector and the broader public service itself which were not allowed to strike or lock-out.

The right to strike or lock-out could only be exercised after a rather complex series of events had taken place. The contract must have expired, there must have been fact finding, a supervised vote rejecting the last offer received from the employer, and a supervised strike vote.

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[31] Colleges Collective Bargaining Act, 1975, c. 74.

[32] School Boards and Teachers Collective Negotiations Act, 1975, c. 72.

Negotiation Time Lines

The changes introduced in the CCBA included a reduction in the maximum duration of the collective agreement from two years to one year, the specification of August 31 as the date on which the collective agreement expires, and lastly, requiring notice to bargain to be served in January of the year in which the agreement expires. By contrast, the PSA did not address timelines, and CECBA did not specify an expiry date, but required notice to bargain be served between 90 and 120 days prior to expiry. The reason for these changes appears to have been the legislature's attempt to align the college bargaining cycle with the cycle in the public education sector.

Supervised Votes and Sanctions

Under the provisions of the CCBA, the union could hold a vote on the last offer received from the Council of Regents, as well as a vote on whether or not to strike, if it decided that these legislated procedures should be invoked during the negotiations process. Both votes had to be supervised by the College Relations Commission, the new agency responsible for overseeing collective bargaining in the colleges.

While the right to strike was extended to college employees, it could only be exercised when certain procedures outlined in s.59(1) of the Act, had been followed:

> *No employee shall strike unless,*
>
> *(a) there is no agreement in operation between the Council and the employee organization that represents the employee;*
>
> *(b) notice of desire to negotiate to make or renew an agreement has been given by either party;*

> *(c) all the matters remaining in dispute between the Council and the employee organization that represents the employee have been referred to a fact finder and fifteen days have elapsed after the Commission has made public the report of the fact finder;*
>
> *(d) the offer of the Council in respect of all matters remaining in dispute between the parties last received by the employee organization that represents the employee is submitted to and rejected by the employees in the bargaining unit by a vote by secret ballot conducted under the supervision of and in the manner determined by the Commission;*
>
> *(e) the employees in the bargaining unit have voted, not earlier than the vote referred to in clause (d) and not before the end of the fifteen-day period referred to in clause (c), in favour of a strike by a vote by secret ballot conducted under the supervision of and in the manner determined by the Commission; and*
>
> *(f) after a vote in favour of a strike in accordance with clause (e), the employee organization that represents the employee gives the Council and the employer written notice of the strike and of the date on which the strike will commence at least five days before the commencement of the strike.*

The provisions of the Act stated that fact finding was an additional prerequisite for a strike to occur. This meant that at least one type of non-binding dispute resolution mechanism (the other being mediation) had to be used before the academic or support staff bargaining unit was able to invoke sanctions. This requirement was in addition to the supervised votes.

S.63(1) of the Act required that the following conditions be met before a lock-out could occur:

> *No employer shall lock-out employees unless,*
>
> *(a) there is no agreement in operation between the Council and the employee organization that represents the employees;*
>
> *(b) notice of desire to negotiate or make or renew an agreement has been given by the Council to the employee organization that represents the*

> *employees or by the employee organization that represents the employees to the Council and the Council has negotiated in good faith and made every reasonable effort to make or renew an agreement;*
>
> *(c) all the matters remaining in dispute between the Council and the employee organization that represents the employees have been referred to a fact finder and thirty days have elapsed after the Commission has given a copy of the report of the fact finder to each of the parties;*
>
> *(d) the Council on behalf of all employers gives the employee organization that represents the employees written notice of the lock-out and of the date on which the lock-out will commence at least five days before the commencement of the lock-out.*

A notable difference between the CCBA and the SBTCNA was in the strike and lock-out procedures. Under the CCBA the employer was not required to conduct a vote on the decision to lock-out, as had to be done by the school boards under the SBTCNA. Even more noticeable was the identification of the *"employer"*. The college board of governors, rather than the Council of Regents, was identified as the entity on the employer side of the bargaining table that makes the decision as to whether bargaining unit members were to be locked-out.

Further, pursuant to s.63(2) of the Act the employer also had the ability to close a college in the event that a bargaining unit invoked a strike:

> *Where a lawful strike is declared or authorized employees engage in a lawful strike, the employer may, with the approval of the Council, close a college or any part thereof where the employer is of the opinion that,*
>
> *(a) the safety of students enrolled in the college may be endangered;*

> *(b) the college buildings or the equipment or supplies therein may not be adequately protected during the strike; or*
>
> *(c) the strike will substantially interfere with the operation of the college,*
>
> *and may keep the college or any thereof closed until the employee organization that called or authorized the strike or that represents the employees engaged in the strike gives written notice to the Council and the employer that the strike is ended.*

Therefore, in the event of a strike by a bargaining unit, the employer could invoke either of two sanctions: a lock-out or a closing of the colleges.

A provision of note in the CCBC was the "deemed strike" clause. This clause, not found in the Ontario Labour Relations Act or the SBTCNA, prohibited bargaining unit members from ´crossing picket lines´ and reporting for work in the event of a strike or lock-out. Its origins in the CCBA are uncertain, but it appears to have been intended to force a complete, system-wide, shut-down, rather than the situation in which one or more colleges remained open, while others were closed. While a misnomer to the extent that the same provision applied in case of an employer lock-out, s.59(2) of the Act stated:

> *"Where the employee organization gives notice of a lawful strike, all employees in the bargaining unit concerned shall be deemed to be taking part in the strike from the date on which the strike is to commence, as set out in the written notice, to the date on which the employee organization gives written notice to the Council and the employer that the strike is ended, and no employee shall be paid salary or benefits during such period."*

Third-Party Assistance

A much broader and innovative approach to third-party dispute resolution mechanisms was provided for under the CCBA. Two mechanisms, fact finding and final offer selection, were incorporated into the CCBA and the SBTCNA.

Fact finding is a form of non-binding dispute resolution whereby a disinterested, neutral third party inquires into the bargaining parties' negotiations and writes a report on matters that have been agreed upon, and those that remain in dispute. In the report, the fact finder may make non-binding recommendations on disputed matters which may then serve as the basis for a settlement. Fact finding under the CCBA was intended to serve three major purposes.[33] The first was that the parties may benefit from an experienced professional helping them to structure the issues in bargaining and may bring relevant data to bear on those issues in dispute. The second idea was that the threat of publicly revealing the extreme negotiating positions taken by either or both of the parties could act as an incentive for them to take reasonable approaches to the negotiations. The third idea was that the public had a right to know what is going on in public sector disputes and that the fact finder could be the public's 'window' on negotiations.

The second innovation contained in the CCBA was final offer selection. This mechanism is similar to binding interest arbitration in that both bring finality to the negotiations process. Their dissimilarity lies in the allowable latitude available to the third-party neutral. Under interest arbitration, the arbitrator (or three-member tribunal) can decide on the unresolved matters in any fashion. Theoretically at least, this ability can result in an award that is less than what either party promoted, more than either, or - as is typical - a resolution of matters at some point between both parties' positions.[34] However, under the terms of the CCBA, the single, final offer selector must select either party's positions in toto. In other words, the selector cannot pick and choose between the parties' positions; the selection is made from either all of one party's proposals or all of the other party's proposals.

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[33] See Chapter 14 - "Bargaining Process" - for a thorough discussion of the entire process, including fact finding.

[34] For an in-depth discussion of conventional interest arbitration and final offer selection see: Thomas A. Kochan and J. Baderschneider, "Dependence on Impasse Procedures"; John C. Anderson, "The Right to Strike Versus
(Footnote Continued)

Administrative Agency

The College Relations Commission was created in the CCBA with the following assigned duties:

> *(a) to carry out the duties imposed on it by this Act and such other functions as may, in the opinion of the Commission, be necessary to carry out the intent and purpose of this Act;*
>
> *(b) to maintain an awareness of negotiations between the parties;*
>
> *(c) to compile statistical information on the supply, distribution, professional activities and salaries of employees;*
>
> *(d) to provide such assistance to parties as may facilitate the making or renewing of agreements;*
>
> *(e) to select and, where necessary, to train persons who may act as mediators, fact finders, arbitrators or selectors;*
>
> *(f) to determine, at the request of either party or in the exercise of its discretion, whether or not either of the parties is or was negotiating in good faith and making every reasonable effort to make or renew an agreement;*

(Footnote Continued)
Compulsory Arbitration: Effects of the Use of Impasse Procedures in Canadian Local Government Negotiations" (unpublished paper, UCLA, 1978); Alton W.J. Craig, The System of Industrial Relations in Canada (Scarborough, Ontario: Prentice-Hall Canada Inc., 1983) pp. 181-205; Bryan M. Downie, The Behavioural, Economic and Institutional Effects of Compulsory Interest Arbitration (Ottawa: Economic Council of Canada, December 1979); Peter Feuille, "Final Offer Arbitration and the Chilling Effects," Industrial Relations (Calif.), Vol. 14, No. 3, (Oct. 1975), pp. 302-310; Peter Feuille and James B. Dworkin, "Final-Offer Arbitration and Intertemporal Compromise or It's My Turn to Win," Proceedings of the Thirty-First Annual Meeting, Industrial Relations Research Association Series, Chicago, Aug. 29-31, 1978, p. 89.

> *(g) to determine the manner of conducting and to supervise votes by secret ballot pursuant to this Act; and*
>
> *(h) to advise the Lieutenant Governor in Council when, in the opinion of the Commission, the continuance of a strike, lock-out or closing of a college or colleges will place in jeopardy the successful completion of courses of study by the students affected by the strike, lock-out or closing of the college or colleges.*

The College Relations Commission, both commissioners and staff, also act as the Education Relations Commission established under the SBTCNA. The mandates of both Commissions are virtually identical, but the scope of responsibility differs dramatically. The Education Relations Commission provides services to over 200 public and separate school boards with a total of approximately 200 collective agreements. The College Relations Commission, on the other hand, attends to only two bargaining units, each having one collective agreement covering all twenty-two colleges.

Locus of Bargaining

The level of negotiations was not specifically stipulated in the Act (as it was not under either the Public Service Act or the Crown Employees Collective Bargaining Act). However, the continuation of the Council of Regents as the bargaining representative for the colleges indicated a provincial-level regime.

Bargaining Parties

As the bargaining representative, the Council of Regents was responsible for the negotiation of the collective agreements. The colleges continued their participation in the process through the Council of Regent´s committee structures.

On the employee side of the bargaining relationship, OPSEU (successor to the CSAO as per a Special General Meeting on June 13-14, 1975) continued to represent both the support staff and academic bargaining units. The CCBA, as had CECBA, continued the provision for mechanisms and procedures concerning the determination of employee representation. Nevertheless, OPSEU continued to be the representative of choice for the college employees.

Negotiable Matters

Both the PSA and CECBA contained long lists of terms and conditions of employment which were non-negotiable. The introduction of the CCBA changed all of that - except for superannuation, which remained the only item which was statutorily exempted from collective bargaining.

4.5.2 Negotiations under the Colleges Collective Bargaining Act

In this chapter each round of negotiations is discussed in greater detail than the rounds of negotiations which occurred under the PSA and CECBA. The reason for doing this is to sketch the evolution of the collective agreements under a regime of relatively ´free´ collective bargaining.

Support Staff Negotiations

The Support Staff have been involved in nine rounds of negotiation under the CCBA[35]. There have been six one-year agreements, and three two-year agreements. Each round has had fact finding and seven rounds have involved post-fact finding mediation. There have been five last offer votes, two strike votes, and six ratification votes. There has been one strike in the system in 1979. A summary of these events is outlined in Figure 4.3.

The length of time the parties have been without an agreement, after expiry of the previous agreement, has varied. The longest period was 10 months (1982/84 when the entire

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[35] The 1987/89 round of negotiations was not included in this Commission´s data analysis.

FIGURE 4.3

SUPPORT STAFF NEGOTIATIONS[1]
UNDER THE COLLEGES COLLECTIVE BARGAINING ACT

Agreement Year	Event	Date	Third Party
1976/77	Fact finder appointment	August 17, 1976	Ross Kennedy
	Ratification Vote	October 12, 1976	
1977/78	Fact finder appointment	September 19, 1977	Kevin Burkett
	Ratification Vote	November 4, 1977	
1978/79	Fact finder appointment	September 5, 1978	Ross Kennedy
	Fact finding report made public	November 2, 1978	
	Last Offer Received Vote	November 16, 1978	
	Mediation	November 26, 1978	Harvey Ladd
	Strike Vote	January 17, 1979	
	Sanction	January 24, 1979	
	Ratification Vote	February 6, 1979	
1979/80	Fact finder appointment	July 20, 1979	Graeme McKechnie
	Mediation	August 7, 1979	Terry Mancini
	Fact finding report made public	September 10, 1979	
	Ratification Vote	October 9, 1979	
1981/82	Fact finder appointment	July 9, 1981	Ian Springate
	Mediation	August 13, 1981	Jeffrey Gandz
	Fact finding report made public	August 27, 1981	
	Last Offer Received Vote	September 14, 1981	
1982/83	Fact finder appointment	August 6, 1982	Graeme McKechnie
	Assistant fact finder appointment	August 12, 1982	
	Mediation	August 17, 1982	Jeffrey Gandz
	Fact finding report made public	September 23, 1982	
	Last Offer Received Vote	September 23, 1982	
1984/85	Fact finder appointment	April 22, 1984	Graeme McKechnie
	Fact finding report made public	June 18, 1984	
	Last Offer Received Vote	June 22, 1984	
	Mediation	July 27, 1984	Jeffrey Gandz
	Strike Vote	August 14, 1984	
	Ratification Vote	September 17, 1984	

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[1] This chronology has been developed from records obtained from the College Relations Commission.

Agreement Year	Event	Date	Third Party
1985/87	Fact finder appointment	July 15, 1985	Gene Swimmer
	Mediation	July 30, 1985	
	Last Offer Received Vote	September 20, 1985	
	Ratification Vote	September 20, 1985	
1987/89[2]	Fact Finder appointment	June 8, 1987	R. Lawless
	Mediation	August 24, 1987	Gene Swimmer
	Ratification Vote	September 24, 1987	

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[2] The 1987/89 round of negotiations has been included in the chronology of events as supplemental information. It has not been used in the Commission's data analysis.

agreement was restructured) and the shortest was in 1987 when the new agreement was concluded one week before the expiry of the predecessor agreement.

1976/77: The first round of bargaining under the Colleges Collective Bargaining Act began in January of 1976. The parties concluded a tentative Memorandum of Understanding, however it was subsequently turned down by the union membership (73 percent Against) in a June ratification vote. The Council challenged the appropriateness of the communication to the membership, and the fact finder later identified their concerns as legitimate.

Ross Kennedy was appointed as fact finder on August 17, 1976. His report identified the key issue as monetary, resulting primarily from different interpretations of the prevailing federal incomes restraint legislation. The Council wanted to compute merit increases as part of the total allowable inflation-restrained wage increase, while the Union wanted the increases to be over and above the maximum increase allowed under the inflation legislation. Kennedy was of the opinion that, realistically, merit increases should be taken into account when computing the actual level of increase.

The Union was also concerned over the reliability of the Council's costing data. Kennedy acknowledged the difficulty in trying to collect data from the 22 colleges, and suggested a review of the costing methods and statistics. His related observation was that it was equally as difficult to develop reliable estimates of the actual numbers of employees involved in the college system, because of the vast numbers of part-time and temporary personnel.

The settlement was negotiated without further third-party involvement and a second ratification vote was held on October 12, 1976 and the agreement was accepted. Most changes to the agreement were minor and concerned vacations, leaves of absence, seniority and, the grievance procedure.

1977/78: In this round, a fact finder was appointed in September, 1977 and an agreement was reached during the fact finding process. Kevin Burkett, the fact finder, met with the parties twice at the end of September, and in early October, after fifteen hours of bargaining, the parties reached an agreement which was ratified on November 4, 1977. Later that month the College Relations Commission was requested, by the Council of Regents, to make a determination on the counting of ballots for the ratification vote, and ruled in favour of the Council.

The major changes to the agreement included additions to the vacation clause, the seniority clause, and the grievance procedure. The opportunity to send classification complaints to arbitration was incorporated into the agreement, and the Notices clause, which outlined informational requirements, was expanded.

1978/79: In only the third round of bargaining under the CCBA, the parties indicated, to the fact finder, that they did not anticipate that fact finding would accomplish anything. They also identified a preference for the fact finder not to ´interfere´ by making recommendations. The process of fact finding was seen, by both the Council and the Support Staff bargaining unit, as a hindrance to their efforts to negotiate a collective agreement.

This agreement was also subject to the federal Anti-Inflation legislation, which capped compensation at 2.8 percent. The parties were aware of this cap, but the post-Act increase for 1979 was in dispute. The fact finder, Ross Kennedy, pointed out that the Union was expecting the legislation to end on December 31, 1978. Effective January 1st, 1979 their new demand for compensation and benefits was for 14.5 percent. This was to be on top of the 2.8 percent increase, for a cumulative total increase of 17.3 percent. The Council's position was that the controls were in effect until April 1, 1979, and its total compensation offer was 4 percent, in addition to the 2.8 percent in the first-year, for a total of 6.8 percent.

Kennedy identified this issue as the *"most difficult hurdle for the parties to overcome"*. He was also of the opinion that the Union position was *"unrealistic"*, but on the other hand, the Council's position would definitely come at the *"low end of a range of reasonableness"*. The parties preferred to leave any discussion of classification adjustments until the total compensation issue was addressed. Other areas of dispute involved fringe benefits, holidays and vacations, and notice of layoff.

Kennedy's report recommended the appointment of a mediator, and on November 26, 1978, approximately two weeks after the report was made public and one week after a last offer received vote was held, Harvey Ladd was appointed. Negotiations continued into January and a strike vote was held on January 11, 1979. In the final hours before the strike, there was, apparently, a second last offer given to the union negotiating team which they refused to take to their membership. The Council of Regents presented the case to the College Relations Commission, their position being that there should have been a second last offer vote. The CRC determined, however, that since both a last offer and strike vote had already been held, there was no statutory basis for holding a further vote. The day following that determination, January 24, 1979, the support staff went on strike. They were out until February 6, 1979 when the newly negotiated agreement was ratified.

A lot of controversy surrounded the strike. The Union charged that there were 'less-than-professional' bargaining tactics employed by 'incompetent' individuals in the Staff

Relations/Benefits Unit of the Ministry of Colleges and Universities. The Council saw the strike as a ′flexing of muscles′ for some new union leaders.

The strike lasted for two weeks but a new agreement was reached by the parties with mediation assistance. There were changes in the Hours of Work and Vacation clauses and certain agreement language became mandatory rather than directive.

1979/81: The third round of negotiations under the Colleges Collective Bargaining Act again entered the fact finding stage without the parties having reached an impasse in negotiations. Non-monetary items had been discussed, however there were lingering hard feelings from the strike which made the parties reluctant to deal with the monetary items or even present data in support of their positions.

Graeme McKechnie was appointed as fact finder on July 20, 1979. The issues in dispute covered several areas including: the current classification system; the threat of reductions in hours of work; banning contracting out which would result in layoff of bargaining unit members; and, how to deal, contractually, with jobs of *"short duration"* (10 month or less positions).

McKechnie continued the tradition of making no recommendations, but strongly urged that the parties seek mediation assistance. Terry Mancini was appointed as mediator on August 7, 1979 and the parties were able to arrive at an agreement which was ratified on October 9, 1979.

A key change in this agreement was the Recognition clause. Judge Anderson, in the arbitration board′s award under the Public Service Act, dealt with the point at which temporary employees would be excluded from the bargaining unit. He had stated that they had to be employed continually for a period of six months or more before they could be included in the bargaining unit. This definition was deleted in the new agreement, and for the first time, the substance of the recognition clause was changed.

The Leave of Absence clause also had several significant changes with a designated bargaining unit member allowed time off to address daily contract administration.

1981/82: The Union requested fact finding early in this round, and Ian Springate was appointed on July 9, 1981. He stated in his report that the parties had both discussed, and resolved, many issues prior to his appointment. Of those issues remaining in dispute, most had not even been discussed. Negotiations were proceeding smoothly, and the parties had scheduled ten future dates for continuation of negotiations. Springate felt that an impasse could be reached at some point, but that the best approach at that time would be mediation. Due to the early stage of negotiations, Springate declined to make any recommendations in his report.

During the fact finding process many initial proposals were withdrawn. Some existing contract provisions were altered, and several new provisions were agreed upon. New issues included restrictions on contracting out, a restructuring of the classification system, language dealing with technological change, a severance pay provision, and ways of dealing with *"red circle"* rates. The Union also wanted to delete a letter of understanding attached to the agreement which dealt with positions of less-than-12-months duration.

Mediation began in mid-August, and a last offer received vote was held September 14, 1981. The bargaining unit voted to accept this offer (92 percent In Favour).

Significant changes in this agreement were made to the Seniority and General clauses. The Seniority clause provided for recall rights for positions, as well as adding mileage limits as a criterion in the determination of what was considered to be a vacancy. The General clause further constrained the colleges' latitude regarding the job posting process.

Key additions to the Appendices and Letters of Understanding included the establishment of a committee to review the classification system, a joint insurance committee, procedures for integrating employees previously excluded from the bargaining unit but allowed into it through a recent OLRB decision, an averaging of hours provision, and a long-term disability review.

For the purposes of this Commission's study, it is interesting to note that a new Letter of Understanding was added which identified the problems caused by the use of regular part-time employees (not covered by the collective agreement) who performed support staff work. The letter stated, in effect, that there had been previous misunderstandings over the issue, and that discussions could be held, in future, at the Union's request. These discussions would be to explain and clarify the purpose of those employees and to provide pertinent information surrounding the purpose. This was the beginning of an increasingly vigilant union scrutiny of management practices in the area of part-time employment.

1982/84: The parties began this round of negotiations in April, 1982 and met over 13 days prior to the appointment of Graeme McKechnie as fact finder in August of 1982. He reported that the parties were not at an impasse, but only at the *"exploratory stage"* on most issues. He declined to make recommendations, pointing out that if recommendations were made they could create a rigidity in the parties' positions which would be dysfunctional to the potential future resolution of the negotiations.

Over half of the initial proposals (71 from the Union and 14 from the employer) had been either settled or withdrawn at the time of fact finding. Again, the monetary items which had not been discussed prior to fact finding constituted the major portion of the issues in dispute.

The major union proposals dealt with a restructuring of the classification system, removal of the averaging of hours provisions, prohibitions against contracting out (regardless of the numbers of employees involved), and the inclusion of a Sabbatical Leave provision.

Jeffrey Gandz was appointed as mediator in mid-August. The Council's last offer was rejected in a vote held in late September, and this placed the negotiations under the provisions of the provincial wage restraint legislation - Bill 179 or the Inflation Restraint Act[36]. Negotiations resumed for a short period in January and, with continued mediation assistance, the parties agreed on a two-year settlement in June of 1983. This was a two year agreement but, in effect, it was a 'one-year back, one-year forward' arrangement which left the support staff without an agreement for about ten months.

A complete restructuring of the entire collective agreement was completed in this round, as well as several substantive changes. They included increasing the informational requirements on the colleges, the addition of language concerning sexual harassment, the establishment of the Employee/Employer Relations Committee and a new Prepaid Leave Plan. Key Appendices and Letters of Agreement included a committee to examine further revisions to the new agreement structure, a guaranteed minimum wage increase to bargaining unit members earning less that $20,000 per annum, and the Employee/Employer Relations Committee terms of reference.

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[36] An Act Respecting the Restraint of Compensation in the Public Sector of Ontario and the Monitoring of Inflationary Conditions in the Economy of the Province, 1982.

1984/85: In this round, the parties themselves again addressed the difficulties with fact finding. Graeme McKechnie, the fact finder, stated that the union representative declared that fact finding was not viewed as a useful mechanism in negotiations for this bargaining unit, and that the call for a fact finder was more of a ´technicality´ than was the case in other sets of negotiations where fact finding was used extensively, such as under the School Boards and Teachers Collective Negotiations Act. Because the parties preferred to negotiate ´around´ fact finding, they both requested that recommendations not be made.

This round proceeded similarly to the previous rounds. The parties began their negotiations allowing for a maximum amount of time to bargain. Fact finding was instigated earlier than ever before (April, 1984) and the necessary consultations were concluded the following month. There had been no impasse in bargaining, and negotiations continued on the non-monetary items. Monetary items had not been discussed.

McKechnie, the fact finder, described the teams as "*sophisticated*" in two respects: firstly as negotiators, and secondly in their approach to bargaining. He stated that the negotiations were well in control, and that mediation should be made available if an impasse situation were to arise.

In this round, the parties´ submissions to the fact finder were substantial. The Union proposed including large numbers of employees in the bargaining unit through the Recognition clause, and the Council requested clarification of who was already in the bargaining unit. The Union´s concern over the erosion of the bargaining unit is further evidenced by their proposal that employees excluded from the bargaining unit by the Recognition clause should only be allowed to perform bargaining unit work in an emergency. Other union demands included a joint study of the classification system, a vision and hearing care plan, provisions under the Health and Safety article regarding video display terminals (VDT's), and a prohibition of contracting out.

A last offer vote was held in June, 1985, and was roundly rejected by the membership (88 percent Against - 12 percent In Favour). In late July, Jeffrey Gandz was appointed as mediator but a quick settlement was not made. A strike vote followed in mid-August and the members of the bargaining unit were marginally in favour of a strike - 56 percent In Favour and 46 percent Against. Negotiations continued and, with continued mediation assistance, the parties concluded an agreement that was ratified on September 17, 1985.

There were many changes in this agreement. The Recognition clause was altered to ensure that preference would be given to full-time staff over part-time staff, and to allow for the possible conversion of part-time positions to full-time. The part-time problem also surfaced in the informational requirements. A new condition required the colleges to provide explanations to the Union for assigning work on the basis of part-time and full-time assignments, and also to entertain union recommendations as to the feasibility of converting part-time positions to full-time positions.

The Layoff/Recall article also underwent substantial change. There were new procedures based on the number of employees involved in the displacement, new meeting requirements with timelines to discuss contracting out decisions, special severance arrangements and recall rights for those adversely impacted as a result of contracting out, and explicit criteria for determining the loss of seniority or expiry of recall rights.

1985/87: The parties held seven meetings between May and June of 1985, at which point they made a joint request for fact finding. Gene Swimmer was appointed as both fact finder and mediator in late July.

Swimmer reiterated the parties' view of the fact finding process as a legislative hurdle which had to be completed before serious bargaining could begin. In this round, the parties were not at an impasse and had scheduled future negotiations sessions to cover five consecutive days in August, 1985.

The issues in dispute were the same, recurrent issues as had been placed before fact finders, time and time again. The Union wanted a redefinition of the bargaining unit to include part-time employees, and the Council wanted a clarification of which employees were already supposed to be included in the bargaining unit. Other recurrent issues included contracting out, information reporting requirements, and hours of work.

New issues brought to the table by the Union included: language to protect employees from being asked to perform work normally done by other employees who were engaged in a legal strike; a percentage cap on the number of part-time employees in a designated area; and, safety provisions for video display terminals (VDTs).

A last offer vote, strike vote, and ratification vote were held simultaneously on September 20, 1985. The membership voted overwhelmingly in favour (82 percent) of accepting the agreement.

The Recognition clause in the new agreement remained essentially the same but included, for the first time, temporary employees replacing bargaining unit members on leaves of absence from the exclusions. Additions included a new classification system, procedures for dealing with reclassified employees, and a new Appendix. This Appendix addressed pay rates, dues, commencement and expiry of employment, vacation and holiday provisions for temporary replacements, and allowed a college to release the temporary employee before the expiry of the agreement.

1987/89: The parties once more entered into negotiations through the spring and summer of 1987. While there was the routine fact finding, without specific recommendations, and mediation, the parties carried on negotiating and reached an agreement before the 1985/87 agreement had expired.

In this round of negotiations, the Union bargained for and received salary and benefits increases, new articles on work stations and VDT testing, a new article on temporary job postings, and a new article covering transfers between campuses. The parties also developed new language to cope with some problems which had arisen from the job classification system negotiated in 1985/87. The settlement was ratified by a majority of the members of the bargaining unit (74 percent) on September 24, 1987.

Academic Unit Negotiations

As Figure 4.4 shows, there have been seven completed rounds of negotiation since 1975, and one wage-reopener[37]. The negotiations and the reopener all had fact finding, and all but one (1982/83) had mediation-post fact finding. There were six last offer votes and five ratification votes. The 1982/84 negotiations were cut short by Inflation Restraint legislation (Bill 179)[38], and the 1984/85 negotiations resulted in back-to-work legislation. In the 80/81 reopener there was voluntary interest arbitration (Burkett), and in 84/85, the year of the only strike, there was a jeopardy advisement and legislated interest arbitration. There have also been three complaints regarding voting procedures, all of which were

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[37] The 1987/88 round of negotiations, which was underway at the writing of this report, was not included in this Commission's data analysis.

[38] *An Act Respecting the Restraint of Compensation in the Public Sector of Ontario and the Monitoring of Inflationary Conditions in the Economy of the Province*, 1982.

FIGURE 4.4

ACADEMIC STAFF NEGOTIATIONS[1] UNDER THE COLLEGES COLLECTIVE BARGAINING ACT

Agreement Year	Event	Date	Third Party
1976/77	Fact finder appointment	September 29, 1976	Ken Swan
	Mediation	December 3, 1976	Graeme McKechnie
	Ratification Vote	January 14, 1977	
1977/78	Fact finder appointment	September 26, 1977	Bryan Downie
	Mediation	November 23, 1977	Harry Waisglass
	Fact finding report made public	November 30, 1977	
	Last Offer Received Vote	April 28, 1978	
	Ratification Vote	September 28, 1978	
1979/80	Fact finder appointment	August 21, 1979	Bryan Downie
	Mediation	September 11, 1979	Harry Waisglass
	Fact finding report made public	October 11, 1979	
	Last Offer Received Vote	November 8, 1979	
	Strike Vote	November 8, 1979	
	Ratification Vote	January 15, 19	
1980 (Re-opener)	Fact finder appointment	September 20, 1980	Gary O'Neill
	Fact finding report made public	October 24, 1980	
	Mediation	November 24, 1980	Fraser Keen
	Voluntary Interest Arbitration	September 9, 1981	Kevin Burkett
1981/82	Fact finder appointment	July 8, 1981	Jeffrey Gandz
	Mediation	August 25, 1981	Norman Bernstein
	Fact finding report made public	August 26, 1981	
	Last Offer Received Vote	September 28, 1981	
1982/83	Fact finder appointment	June 21, 1982	Jeffrey Gandz
	Fact finding report made public	August 9, 1982	
	Last Offer Received Vote	September 22, 1982	

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[1] This chronology has been developed from records obtained from the College Relations Commission.

Agreement Year	Event	Date	Third Party
1984/85	Fact finder appointment	July 3, 1984	David Whitehead
	Fact finding extension to due date	August 2, 1984	
	Mediation	August 20, 1984	Graeme McKechnie
	Fact finding report made public	September 5, 1984	
	Last Offer Received Vote	September 18, 1984	
	Strike Vote	October 2, 1984	
	Sanction	October 17, 1984	
	Jeopardy advisement, Back-to-Work Legislation and Legislated Interest Arbitration	November 7, 1984	Paul Weiler
1985/87	Last Offer Received Vote	October 24, 1985	
	Fact finder appointment	October 25, 1985	Gene Swimmer
	Ratification Vote	November 15, 1985	
	Mediation	November 18, 1985	Gene Swimmer
	Fact finding report made public	October 15, 1985	
1987/?[2]	Fact Finder appointment	June 15, 1987	Ray Illing
	Last Offer Received Vote	September 29, 1987	
	Mediation	October 27, 1987	Ray Illing

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[2] The 1987 round of negotiations has been included in the chronology of events as supplemental information. It has not been used in the Commission's data analysis.

dismissed, and two bad faith bargaining complaints, both of which were withdrawn before hearings commenced.

The rounds of negotiations have been long and involved. The longest period that the parties were without an agreement was approximately 16 months (1984/85, the year of the strike) and the shortest period was approximately 1.5 months (1981/82). The average was 8.6 months and the total was 60.5 months. Almost half the time since the Colleges Collective Bargaining Act was passed has been spent under the terms and conditions of employment derived from expired agreements!

As well as being long and involved, the negotiations have centered around consistently recurring issues. This has resulted in predictable and entrenched positions of the parties prior to each round of bargaining. The main recurrent issues have been, in addition to salaries and benefits: workload, a unified salary grid, rights for probationary employees, no seniority accumulation for employees outside the bargaining unit, vacation parity with teachers for librarians and counsellors, various restrictions on the use of part-time and sessional employees, and the inclusion of extended and continuing education activities in collective bargaining.

The workload issue has been the most difficult and recurrent problem of all. The Estey arbitration board had dealt at length with the principles involved in determining instructional assignments, but the issue proved to be a continuing area of frustration. Swan's 1976 fact finding, the first under the Colleges Collective Bargaining Act, referred to the workload article as *"a clause in which the Union ... has a substantial interest..."*. Downie, in his 1977 fact finding report, cited the Instructional Load issue as one of two *"major hard core issues"*. The real problems came to a head in 1982/84 which, according to

Skolnik[39], was the beginning of a period of severe financial restraint. Workload was even purported to be the cause of the strike the following year, although some sources have suggested to the Commission that it was the pretext for the strike, as opposed to the actual cause.

The recurring demands of the Council were few in number and relatively less significant than those made by the Union. The main proposal was the introduction of a short-term disability plan.

Virtually all fact finders involved in the negotiations have cited several fundamental problems throughout the rounds of negotiations between 1976 and 1987:

- the structure of the bargaining relationship, with the centralized bargaining and local administration;
- the diversity of the colleges and the difficulty of negotiating centralized, provincial agreements in the face of that diversity;
- the lack of reliable and valid data from either of the parties or the College Relations Commission to serve as the basis for negotiating workload related issues;
- no agreed-upon reference groups to make comparisons on salaries, benefits, and workloads;
- the very short planning horizons for the colleges which made long-term employee relations policies difficult to develop and implement because of uncertainties over funding.

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[39] "Survival or Excellence: The Report of the Instructional Assignment Review Committee", by Michael Skolnik, Chairman, July 1985.

1976/77: The first round of bargaining under the Colleges Collective Bargaining Act was conducted cautiously. The parties were still contending with the 1975 Estey board award which had been issued the year before. There were significant interpretation problems over the workload provisions that each side wanted resolved before attempting to make changes to the agreement.

On September 27, 1976 Ken Swan was appointed to the first fact finding assignment. He was of the view that, although the collective agreement had expired on August 31, 1976, the parties had not actually reached an impasse in negotiations. Procedural issues were a problem, and it was on those that he concentrated his efforts.

Swan saw the parties as *"sophisticated negotiators who have been conducting a full collective bargaining relationship for some years"* and wanted to leave as much room for flexibility as possible, to allow the parties to achieve a mutually acceptable compromise. His concerns regarding the imposition of recommendations was based on the diversity in the 22 colleges, a central bargaining authority, a multi-faceted employer and a diverse bargaining unit. Swan stated that any amendments to the agreement provisions would have system-wide implications, and would likely produce different results in each part of the system.

The main proposals put forward by the Union were: the integration of teachers, instructors, and librarians on the same salary grid; vacation parity for teachers, librarians, and counsellors; salary steps for advanced degrees, and the opportunity for the Union to grieve a matter that an individual had chosen not to grieve. The main proposals put forward by the Council were the introduction of a new sick leave plan, and a Christmas vacation period rather than the use of floating holidays.

Swan's report was released to the parties on November 26, 1976, but was not made public since a tentative agreement was reached within the time frames provided by the Act. On December 3, 1976 Graeme McKechnie was appointed as mediator, and a one-year negotiated settlement was reached. A ratification vote was held on January 14, 1977: the results were 59 percent In Favour and 41 percent Against, a narrow margin for ratification.

The new agreement contained few changes. There were alterations to the definition of hours considered to be full-time and part-time, and partial-load was defined for the first time. Relevant wording throughout the agreement, as well as pay scales, was altered to reflect this new category of employee. Two new committees were established (Classification Review Committee and Joint Educational Classification Sub-Committee), and the Central Instructional Assignment Committee was abolished.

The most extensive changes were made to the Seniority (previously called "Service") clause. The probationary provisions and performance appraisal processes were tightened up, and right of recall was introduced. Management was required to provide more employee information to the Union at specified intervals, and language was included to cover union dues payment for partial-load employees.

1977/79: The second round of bargaining was more protracted than the first. Notice of intent to bargain was given in January of 1977 and the agreement was ratified September 28, 1978 - almost nineteen months later. This time frame put the parties in the position of maintaining the provisions of the previous agreement for 11 months past its expiry date.

Bryan Downie was appointed as the fact finder on September 26, 1977. He reported that after three joint meetings with both parties, it was suggested that there be a delay in the hearings.

The parties agreed, and the report was submitted on November 7, 1977.

At the time of Downie's appointment, many issues were in dispute and the parties were far from an agreement. One issue was agreed to during fact finding - a new paragraph granting one full-time employee leave to accept a full-time elected position with the Union. The term would be for two years and would be subject to a suitable replacement being found. No salary or benefits would be paid by the college, but there would be full accumulation of seniority.

As well, Downie discussed the organization of the colleges and quoted the Estey board award several times to point out the incompatibility of centralized bargaining with decentralized administration. He cited the diversity among the colleges, the lack of appropriate reference groups and the lack of aggregated, system-wide data as adding to the difficulty of the negotiations. Downie described the representation of the parties as skilled, but a "*considerable distance from reaching a settlement*" and warned that a strike or lock-out was possible.

Prefacing his recommendations, Downie made several predictions about the college system. He stated that committees would be necessary (preferably set up by the College Relations Commission) to investigate and make recommendations on both the data that the parties would need for future bargaining and the appropriateness of the existing bargaining structure.

The main proposals from the Union included those from the previous negotiations (integration of the salary grid, vacation parity, more salary steps, union grievances), as well as increased rights for probationary employees, no seniority accumulation for employees outside the bargaining unit, and the inclusion of the Extended and Continuing Education employees in the bargaining unit. The major proposal from the Council was, again, a Christmas vacation period to replace floating holidays.

In the absence of an agreement, Downie's report was made public on November 30, 1977. As of November 23, 1977 Harry Waisglass had been mediating: however, it was not until April 18, 1978 that a last offer received vote was held, with 82.6 percent Against. Negotiations continued and a tentative agreement was reached in August. The ratification vote was held in September with 78.8 percent In Favour.

The parties had agreed to substantial changes to three articles: Instructional Assignment, Seniority, and the Grievance Procedure. The Estey board's rolling average concept for calculating workload had apparently been the cause of many problems, and in order to better deal with it the parties developed two options for calculating workload: one that used the rolling average and one that did not, but which allowed for an increase in maximum weekly teaching hours by one hour. This agreement also included language which allowed individual workload agreements to be negotiated.

A number of changes were made to the Seniority article, but the principles involved remained the same. There were clarifications over language and new provisions for accumulating seniority. In the Grievance Procedure article, there were many changes to the timelines involved in the procedure. Several were shortened, but the majority were extended.

Other changes to the agreement included allowing the rationale for a sessional appointment to be included as a potential agenda item for college meetings, allowing the reasoning behind Leave of Absence denials to be requested in writing, and requiring the college to provide an annual list of persons in each classification by salary step and by college.

1979/80: Bryan Downie was appointed for his second fact finding assignment for the 1979/80 set of negotiations. He described the complexity of the system as being in part due to the "*poor match between the structure of bargaining and the structure of the community college system*". Downie was the first external observer to state that the government should examine the collective bargaining arrangements in this system. He saw problems stemming from the parties' inability to plan for the future or to analyze their system of bargaining.

This set of negotiations again produced a large number of items in dispute, and Downie saw the parties as being a "*considerable distance from reaching a settlement*" and he forecast "*another exceedingly long set of negotiations*".

The parties had not dealt with any of the monetary items, or even come close to reaching agreement on some of the non-monetary items. The Union did not want Downie to make recommendations on the monetary items, but did not provide any rationale for their demands. The Council refused to respond until the Union clarified its position.

The "*major hard core issues*" were described as salary increases and job security. Both parties' proposals were the same as in the previous year, with the Union seeking full integration of all academic employees on a single, unified salary grid; vacation parity for counsellors and librarians with the teaching staff; rights for probationary employees; and a denial of seniority accumulation for people who left the bargaining unit to take on positions of responsibility such as chairmen or department heads. The Council proposed a Christmas vacation period.

There was, again, no agreement within the established timelines, and Downie's report was made public on October 11, 1979. A mediator, Harry Waisglass, was appointed on September

11, 1979, and continued mediation through December. During this period the Union, for the first and last time, held the last offer and strike votes simultaneously. They refer to it as ′the famous NO-NO vote′. The votes were held November 8 and the last offer results were 31.8 percent In Favour/ 68.2 percent Against, while the strike vote results were 38.5 percent In Favour/61.5 percent Against. The bargaining unit members had rejected the Council′s last offer, but were not prepared to strike over it. Negotiations resumed after these votes and a tentative agreement was reached December 8, 1979. The membership ratified it on January 15, 1980 with 58.1 percent In Favour.

One of the difficulties encountered in this round of negotiations was the rapidly rising rate of inflation. The parties were uncertain as to how they should handle the monetary issues in the second year of the agreement, and consequently included a clause in the tentative agreement that provided for a ′wage re-opener′ on salaries as of June 1981.

A group of union members charged misconduct over the ratification vote held in January of 1980. Because they could not charge their own union, they entered a charge against the Council. On May 12, 1980 the CRC dismissed the charge, on the basis that it did not have jurisdiction to hear it.

Many articles were changed in this agreement. The thrust of these changes was to increase union involvement in the decision-making process regarding layoffs, displacements, and alternative job assignments. There were notification requirements, information requirements in the notifications, new lists requirements, and requirements to give preference to full-time employees. There were language changes that both reduced ambiguity and deleted any opportunity for arbitrary decisions to be made. The qualification requirements were changed from *"at least equal"* to *"relatively equal"*. The agreement also introduced severance provisions, and provisions for the payment of moving expenses in the event of a relocation.

New articles allowed for a College Deferred Salary - Prepaid Leave Plan, a Dental Plan, and an obligation to health and safety. Other changes were language clarifications.

1980/81: Although the parties had reached a tentative settlement on December 8, 1979 for the 79/81 agreement, they had not reached agreement on the monetary items for the second year of that agreement and they included a ´wage re-opener´ provision in the agreement. The parties met during the month of July, 1980 to negotiate the wage re-opener. An impasse was reached and the Union, unopposed by the Council, requested fact finding. Gary O´Neill was appointed fact finder on September 2, 1980.

The 79/81 agreement allowed for negotiations during the term of the Agreement but limited them to salary rates, hourly rates, and salary progression. During the re-opener negotiations, the parties could not even agree on what was negotiable in the salary areas. The Union wanted the broadest possible interpretation - the renegotiation of the salary structure, for example - while the Council wanted the re-opener confined to the salary levels within the existing structure. O´Neill supported the Council´s position.

O´Neill´s report was submitted to the parties in early October. Because of the parties´ inability to reach a settlement, the report was released to the public October 24. A mediator, Fraser Keen, was appointed on October 24, 1980. Still unable to reach an agreement, the parties agreed to submit the matters remaining in dispute to binding arbitration. Kevin Burkett, the chair of the arbitration board, held the hearing on April 1, 1981 and handed down the award on September 9, 1981.

1981/82: The parties met for sixteen days in 1981 before the application was made for fact finding. This round was different from previous rounds as the Union had a clear and public schedule for negotiations. They made it quite clear that, failing an agreement, they would strike on October 13, 1981. This was clearly an attempt, by the Union, to inject an element of pressure into negotiations - something that had been missing from the previous rounds which had dragged on well beyond the expiry date of the previous agreement.

On July 8, 1981, Jeffrey Gandz was appointed fact finder. He reported that the parties were not at an impasse in the negotiations, and that although only limited bargaining had occurred, the Union had established a bargaining schedule in order to win major concessions from the Council that placed the negotiations against the backdrop of a strike. He concluded that the *"parties in this relationship have not succeeded in establishing a constructive bargaining relationship which concludes a collective agreement within a reasonable time after the expiry of the preceding agreement."* Gandz was of the view that the negotiations appeared to be one continuous round involving the same issues, time after time. He then catalogued the various problems which appeared to contribute to the difficult and protracted negotiations in the academic unit.

Gandz outlined the difficulties inherent in the bargaining structure, reiterating the characteristics which Downie had identified in previous fact finding reports. These included: the diversity of the colleges; their organizational structures and reporting relationships for collective bargaining purposes; the diversity of programs offered and the problems inherent in developing workload formulae to handle such diversity; the centralized bargaining structure in a system of decentralized colleges; the separation of contract negotiations from contract administration; and, the short planning horizons of the colleges.

He also emphasized the *"acute shortage of valid and reliable data"* noting that it was difficult for the Union to establish a concrete case in front of an arbitrator or fact finder given the difficulties with the data, and that it was equally as difficult for the Council to refute the Union's claims. He felt that arbitrators and fact finders hesitated to make decisions or recommendations without the concrete data, which meant that issues remained unresolved in successive rounds of negotiations. Gandz was aware that the data was in the colleges at the local level, but had not been aggregated to the system level.

The Union again demanded salary grid integration, vacation parity, probationary rights, and that Extended and Continuing Education be included in the agreement, but their main demands focused on several new areas which dealt almost exclusively with job security: they proposed language stating that partial-load and part-time would not be used to fill full-time positions; language for financial exigencies; and, language which would make technological change subject to arbitration. The Union also proposed, for the first time, putting quantitative limits on workload, above and beyond the maximum teaching hours in the existing agreements.

The Council opposed the union proposals, but did not present any specific proposals of their own.

Gandz' report was released to the public August 26, 1981. The day before the fact finding report was made public, Norman Bernstein was appointed mediator. As per the Union's bargaining agenda, a last offer received vote was held on September 14. The round rejection of the offer sent the parties back to the negotiating table, and on September 19, 1981 they reached a tentative agreement. The ratification vote was held on September 28, 1981 (72.7 percent In Favour), which was the originally planned ratification vote date. The Union had succeeded in establishing a time-table and sticking to it.

This round also had objections filed by two colleges regarding the conduct of the ratification vote, but both were dismissed by the CRC.

There were three major additions to the agreement in this round of bargaining. The first covered Extraordinary Financial Exigency, and laid out timelines for notification and for the information that was to be included in the notification. The agreement required that the Union be given the opportunity to present recommendations to the college on alternatives and the measures to be taken, and for a waiting period prior to the college proceeding with their plans.

The second addition was a clause which dealt with Employee Displacements Through Technological Change. The provisions were similar to the Financial Exigency provisions, but allowed less involvement of the Union in the decision-making process. There was also provision for a written agreement on the displacement process.

The final major change in the agreement was the introduction of the Employee/Employer Relations Committee. It was an equal representation committee that was to facilitate communication between the parties and provide information on many issues which had proven difficult in previous rounds of negotiation (workload data, sessional data, both local and province-wide concerns).

There were numerous other adjustments to the collective agreement. The Salary clause deleted the pro-rated salaries for part-time teachers. The new Leave of Absence article allowed an employee to take time off for a dependent child, but maintain certain seniority and benefits. A new paragraph allowed for Survivor Benefits, and other new language dealt with work in penal institutions, and the cost of printing the collective agreements. The changes to the Seniority clause included reducing the probationary period to one year for those coming into a college from another college or with an Ontario Teacher Certificate, with the accumulation of one year's seniority upon completion of the probation. The new agreement also allowed those who had worked less than half-months to accumulate the time and be credited for a full month of work. More progress reports were required, and the layoff and displacement language was expanded to include involuntary transfers and reductions. There were revisions made to reduce managerial discretion regarding transfers, and maternity leave was included in the accumulation of seniority while on leave.

1982/84: This round began with both parties aware that provincial inflation legislation was pending. Several negotiating sessions were held before the Union requested the appointment of a fact finder and this appointment was unopposed by the Council of Regents.

Jeffrey Gandz was appointed on June 21, 1982 for his second fact finding appointment with the CAAT Academic staff. And again, he stated that the negotiations had not broken down, only that they *"lacked momentum"* because of the uncertainty in the economy and the possibility of price and wage controls. The Union, in this round of negotiations, had limited its proposals to a specific few, and had not set a strike deadline.

Gandz went through the now familiar overview of the problems with the system of bargaining, the short planning horizons, and the lack of data. He recommended, as he had in his first fact finding report, that the government establish an *"enquiry"* to focus on *"...the effectiveness of the provisions of the Colleges Collective Bargaining Act with respect to province-wide bargaining and [would] address the relative advantages of this form of bargaining as opposed to collective agreements between individual Colleges and their employees or some form of two-tiered bargaining structure"*.

The Union again presented its recurring demands, but dealt mainly with the issue of workload. The workload proposals were very detailed and covered many definitional matters, allowances for preparation and course development time, student evaluation time, bilingual teaching, travel time, and many others. The Council presented no specific proposals.

The parties were unable to reach an agreement on the basis of Gandz′ report. It was released to the public on August 9, 1982, and a last offer received vote was requested for September 21, 1982. However, on that particular day, Bill 179 was passed by the legislature. The Union, under strong protest from the Council of Regents, succeeded in having the vote postponed until the following day. The results were 13.2 percent In Favour and 86.8 percent Against.

The uncertainty regarding the implications of the legislation effectively halted bargaining in the colleges for approximately three months. The Act itself limited compensation increases in the public sector to "*up to 9 percent*" in the first year of the program (the "*transitional*" year) and to a specified 5 percent in the second year (the "*control*" year). Although it allowed the parties to bargain terms and conditions of employment, it removed the right to strike/lock-out.

The parties eventually resumed negotiations, and reached an agreement on February 25, 1983. There was, however, no ratification due to the provisions of Bill 179.

The Union had planned to deal extensively with Instructional Assignment, but the inability to negotiate the monetary items further delayed this opportunity, and increased their frustration with the workload issue.

There were only three changes to the agreement, and each was of minimal significance. The language in the Instructional

Assignment clause was altered to insert *"Local"* when referring to union committee, the Union Deduction clause deleted the reference to differing amounts for full-time and partial-load employees, and the Life Insurance clause allowed supplementary benefits above the maximum specified amount at full cost to the employee.

1984/85: On October 1, 1983 Bill 111[40] came into effect and effectively capped increases at 5 percent. The parties engaged in much negotiation in this round, and on June 7, 1984 they jointly requested the appointment of a fact finder, despite the fact that the Council apparently felt that the application was premature.

On July 3, 1984, David Whitehead was appointed as fact finder. Whitehead stated, as had Gandz in 81/82, that the ´impasse´ was due to the Union´s bargaining agenda. Although the parties had met before the appointment, the union agenda demanded discussion and agreement on Instructional Assignment before discussing other proposed changes. When an agreement could not be reached on that issue, the Union applied for a fact finder. Hearings were held on July 25th and 26th, and on July 30th Whitehead applied to have the fact finding deadline extended by one month to September 4, 1984. This was over the objection of both parties.

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[40] An Act to Provide for the Review of Prices and Compensation in the Public Sector and for an Orderly Transition to the Resumption of Full Collective Bargaining, 1983.

Whitehead described the relationship as[41]:

> *"characterized by conflict, intense competition, the overt use of power, direct influence attempts, aggressive and antagonistic behaviour, a high level of distrust,and the denial of legitimacy both to the other party (both as a bargaining team and as individual members of the team) and to neutrals such as fact finders and the Commission which appoints them."*

He predicted that agreement would be unlikely without some sanctions in either this round or future rounds. He recommended that the parties jointly determine ways to change the bargaining structure and the relationship in order to deal with the issues.

Although this round of negotiations took place under Bill 111, which allowed a maximum average increase of five percent, neither party had tabled specific wage proposals - the Union's position was dependent on the changes to the workload provisions. Whitehead reported that, although the parties had not discussed compensation, they felt a solution was possible. He was not so sure. The Union was citing inconsistent application of Bill 111 which had resulted in greater increases than the five percent in some bargaining units.

Before dealing with the individual issues, Whitehead recommended more data-gathering on comparable settlements that had been bargained under the legislation, and showed that the majority had come in under five percent. He stated that the complexity of the compensation situation required him to make a recommendation, and he proposed "*that an agreement follow the guidelines and clarify the technical aspects of the legislation through further discussion*".

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[41] David Whitehead, "Report of the Fact Finder", August 17, 1984, p. 19.

No items had been agreed to, the salary situation was as outlined above, and the parties felt that all issues would 'fall into place' after the workload issue had been resolved. Whitehead raised the possibility that there might be difficulty with some of the other issues and he recommended that any changes proposed in areas other than workload and compensation, on which mutual agreement was not readily achieved, not be included in the agreement in this round of bargaining.

The Union proposals dealt exclusively with workload. The thrust of its proposals was as follows:

- quantify 'related' work, that is work in addition to classroom teaching;
- put limits on contact hours and overtime
- introduce a classification scheme;
- allow credit for evening teaching;
- make workload grievable and arbitrable.

The Council's only proposal, and one that had recurred previously, was for the introduction of a short-term disability plan.

Whitehead's report was delivered to the parties on August 20 and released to the public on September 5, 1984. On August 20, 1984, prior to the release of the fact finding report, Graeme McKechnie was appointed as mediator. A last offer received vote was held on September 18, 1984 (4.9 percent In Favour/95.1 percent Against) and mediated negotiations continued on the 24th and 25th of September. These were followed by a strike vote (76.7 percent in Favour/23.3 percent Against) on October 2, 1984, and more mediation on October 14th through 16th. The strike began on October 17, 1984 and on October 24, 1985 Graeme McKechnie was again brought in as mediator in the hope of settling the strike. On November 7, 1984 there was a 'jeopardy' advisement to the government by the College Relations Commission, as provided for in the CCBA, and on November 9, 1984 legislation[42] (Bill 130) was passed, ordering the teachers to return to work.

This Act appointed an arbitrator, first Senator Goldenberg and then Paul Weiler[43], to hear the dispute, but explicitly excluded the workload issue from the mandate. A committee (the Instructional Assignment Review Committee chaired by Professor Michael Skolnik) was provided for in Section 10 of the back-to-work legislation to investigate, review and recommend on the matter of workload. The Union, in response to the legislation, began a court action claiming that the back-to-work legislation was unconstitutional and violated the Canadian Charter of Rights and Freedoms by taking away their right to strike and excluding the workload issues from binding arbitration. Weiler's restricted ability to deal with workload was seen, by the Union, as a denial of justice and it consequently boycotted the Skolnik Committee. The Union did not succeed in its court action.

Weiler dealt with salaries, benefits, compensation due to overwork after the strike, seniority, and financial exigency. The actual agreement changes were few. On salaries, teaching masters, instructors, and librarians received approximately 4 percent salary increases. A special article allowed each member of the bargaining unit an additional four percent of their annual salaries to cover *"the additional duties involved in insuring that no students would lose class time as a result of the strike."* In effect, this meant that the striking faculty recovered most of their lost earnings by working additional hours during the year.

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[42] An Act Respecting a Labour Dispute Between the Ontario Public Service Employees Union and the Ontario Council of Regents for the Colleges of Applied Arts and Technology, 1984, c. 4.

[43] Carl Goldenberg withdrew as the arbitrator after OPSEU launched a court challenge to the back-to-work legislation.

Benefits were improved considerably in the Weiler arbitration award. The group life insurance coverage was increased to $25,000 from $5,000, and a new paragraph allowed for Dependent Life Insurance coverage at 100 percent employee paid premium through payroll deduction. The Long-Term Income Protection Plan remained the same in terms of the benefit level, but included reductions that would apply in certain instances. The OHIP, Extended Health Plan and Dental Plan article extended interim coverage to retired employees at 100 percent premium payment by the employee. The Dental Plan was increased to 100 percent premium payment by the colleges on the ODA schedule for the immediately preceding year. The kilometrage expense was increased and new categories were introduced.

Instructional Assignment Review Committee: Following the academic staff strike in 1984, the Instructional Assignment Review Committee, chaired by Professor Michael Skolnik, was established with the mandate of looking into the workload situation in the colleges.

Skolnik documented a clear improvement in productivity which had taken place within the colleges[44]. The basic funding of college education had been allowed to decrease, in real terms, in the period 1980/85. The college administrators had coped with this funding decline by increasing class sizes and scheduling teachers so that the actual teaching contact hours increased close to the maxima outlined in the collective agreement. Put another way, the average had started to approach the upper limit. While Skolnik was no more able than this Commission to extract valid and reliable data from the colleges on either an individual or aggregate basis, he did conclude that college faculty members were working much harder than they had been as a result of workload decisions made in response to funding shortfalls. He recommended that funding be restored to the pre-1980 levels in real terms. The infusion of money by the new government to add teachers to the college system in 1985/87 may not be directly attributable to the Skolnik report, but undoubtedly it was one element in that funding decision.

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[44] "Survival or Excellence", p. 73.

His second major criticism was over the way that many colleges managed workload distribution. An autocratic, numbers-driven approach to assigning workload to instructors appeared to permeate the system. According to Skolnik there was a pattern of detachment of the academic administrators from the concerns of teachers which manifested itself in both inequitable and in some cases unreasonable workloads and, beyond that, in feelings of anger and frustration by faculty members at the way it was being done.

To some extent Skolnik attributed this to the separation of contract administration, or more generally speaking the management of people under a collective agreement, from the negotiation of that agreement. One of his solutions was to recommend local bargaining over matters of workload.

1985/86: Intent to negotiate was filed on January 22, 1985. Initial positions were exchanged on August 20, 1985 with the Union again proposing a formulaic approach to calculating workload. The Council, while prepared to discuss the workload issue, was not prepared to put a specific proposal on the bargaining table. Gene Swimmer, appointed as a mediator and subsequently as fact finder, stated that after several meetings

the parties were negotiating amicably. The parties had concentrated on workload and, although negotiations between the parties had resulted in movements on both sides, they had ended in a stalemate. In what Swimmer described as an *"unconventional move"* at such an early stage in the negotiations, the Union agreed to present the Council's last offer to the bargaining unit.

At the end of October, with the Union campaigning for its rejection, over 94 percent of voting faculty rejected the Council's last offer.

Not only did the union membership not like the offer, but the Council was having difficulties with its own constituency. The new government had apparently given a directive to the Council of Regents to 'deal with the related work issue'. While Council attempted to negotiate non-teaching time as part of a faculty member's workload, most of the presidents of the colleges apparently remained unconvinced that there was any reason to address the issue. While the Council tried to convince the presidents and other colleges administrators that the formula response to workload was justified, the Union became increasingly frustrated with the wait.

On October 25, 1985 Gene Swimmer was appointed as fact finder. He described the parties' perceptions of fact finding as only *"an extension of the ongoing bargaining, rather than a substitute for it."*

In his fact finding report, Swimmer described the structure of the bargaining relationship and the workload issue as primary sources of the difficulties encountered during the negotiations. **He stated that the 84/85 negotiations had *"ended with mutual trust and respect as low as it had ever been for the past decade."* Swimmer noted, as had others before him, that an** imposed solution by a third party would not work. Only if the parties were to negotiate a mutually acceptable workload clause and accept the responsibility for making it work would a new and constructive relationship be possible. He, therefore, chose not to make any specific recommendations.

Swimmer's report was forwarded to the parties on November 18, 1985 and he then resumed his role as mediator in the ongoing dispute. Little progress was made however, and Swimmer was replaced as a mediator in March of 1986 by Martin Teplitsky. On April 26, 1986 a tentative agreement was reached, which was subsequently ratified on May 15, 1986 with 83.4 percent In Favour and 16.6 percent Against.

There were many changes to this agreement, with the major change to the Instructional Assignment clause. This clause provided for a formula approach to the computation of workload with components. The main provisions of this article provided that:

- total workload assigned and attributed to teachers should not exceed 44 hours per week in any week for up to 36 weeks (post-secondary) or 38 weeks (non-post-secondary);
- the maximum teaching contact hours should be eighteen for post-secondary and twenty for other teachers in any week. This effectively prevented the averaging of hours;
- specific, quantitative allowances be made for 'attributed' time for preparation, evaluation, counselling of students, and other related functions;
- there should be a cap on total annual teaching contact hours of 648 for post-secondary teachers and 760 for others;
- overtime should be paid for work in excess of these maxima;
- instructional assignments should be reviewed by college workload committees;

- all workload complaints, whether or not these maxima were exceeded, should be referred to specially designated workload resolution arbitrators who would issue binding, but not precedent-setting awards covering individual cases;
- the could be negotiation of local workload agreements, which might vary this provincial agreement, by mutual consent of local colleges and their union locals.

The Union had achieved its long sought-after goal: a workload formula with specific, quantitative components, which could be built on in subsequent negotiations, with total arbitrability of workload. The inclusion of a formula was a stunning turn-around on the part of the Council of Regents. It required an infusion of $60 million to the operating budget base of the colleges: $32 million covered the cost of an additional 800 teachers, and $28 million covered additional support staff, administrative costs, and so on. Some colleges have stated that this was insufficient to fund the workload provisions while others appear to have managed within the local-level incremental budget allocations.

In addition to the changes to the workload article, other clauses were substantially revised in this set of negotiations.

- a discharged employee would be entitled to vacation pay in addition to the required notification time;
- the College would also be bound by the confidentiality clause in layoffs, etc.;
- the College would be required to keep lists of probationary and partial-load employees, and to increase the informational requirements on the lists;
- the allowable pregnancy leave would be extended from 6 months to 12 months for seniority accumulation purposes;
- all full-time vacancies would be posted;

- notification would be required, three times annually, of all hires/terminations of bargaining unit members and those hired to teach credit courses;

The major change to the Seniority clause was the further dilution of management discretion in the layoff process. All references to those employees eligible to displace other employees deleted the requirement of 'suitability', and used only the criteria of 'competence, skill, and experience'.

The Grievance Procedure article provided a committee to address the costs of adjournment and cancellation of arbitration hearings, and provided for an alternate authority in the absence of the president. Although the provisions for librarian and counsellor vacation time remained the same, these were split into separate paragraphs. The Union Business clause allowed further reductions in teaching contact hours for union stewards in regard to time for resolution of local issues. The Professional Development Leave clause, in effect a replacement for the Sabbatical Leave clause, imposed a maximum on the number of employees who could take this type of leave in any one year, established similar criteria for approval and payment as the Sabbatical Leave, and required the applicant faculty member to state a 'purpose and usefulness' for each leave. The only change to employee benefits was to delete the Survivor Benefits from the Long-Term Disability Plan. The Personnel Records article was expanded to state that the appraisals themselves were not disciplinary, to allow the employee to obtain a copy of a discipline notice, and to ensure the immediate removal of notices proven to be 'without cause'.

1987/?: If anyone thought that the dramatic changes in the structure of the 1985/87 collective agreement heralded a new era in academic unit negotiations, they were soon disappointed. As of the time this report was being written - December 1987 - the Council of Regents and the academic bargaining unit had been in negotiations for almost ten months. There had been mediation, fact finding, more mediation, a last offer received vote which was rejected, and more mediation. While this Commission has quite deliberately stayed clear of current negotiations, it is obvious from the public statements of the Union and the Council that workload issues, vacations, pay for sessional and partial-load teachers, and the whole litany of matters which have been the subject of previous disputes are once more on the table. And while the Union requested a vote on the last offer received, it has been, to date, unwilling to ask its members for a strike vote. Negotiations are, for all intents and purposes, stalled.

4.5.3 Discussion of Negotiations under the Colleges Collective Bargaining Act

The less restrictive provisions of the Colleges Collective Bargaining Act opened up the scope of negotiations and, of course, allowed the parties the use of strikes and lock-outs as sanctions in collective bargaining. It also substantially complicated collective bargaining by increasing the number of issues that could be in dispute.

Support Staff Negotiations

The support staff negotiations have been highly constructive and the one short strike was resolved by the parties themselves. Everyone involved with those negotiations - the parties themselves and the third parties who have been appointed as mediators and fact finders - has commented on the professionalism of the negotiators, their preparedness to deal with common problems, and their willingness to compromise, after tough bargaining, on issues where they could not have a meeting of minds.

The resulting support staff agreements have shown a gradual evolution and development over the twelve years of negotiations under the CCBA. The recurrent, unresolved issue has been around the subject of part-time employees and this is an issue which relates more to the CCBA, with its definition of bargaining units, than to the collective agreement. What it has forced the Union to do is to seek protection for full-time positions in the collective agreement so that these are not filled by part-timers who are outside the agreement.

The support staff bargaining unit has, time and time again, pointed to the uselessness of the fact finding process for their particular negotiations. It has been perceived as a procedural hurdle which has to be overcome, rather than as a helpful process. Similarly, the presence of mediators in support staff disputes has primarily been a function of the legislation which virtually compels the College Relations Commission to insert mediators pre- and post-fact finding.

Academic Staff Negotiations

In sharp contrast, the academic negotiations have been characterized by extreme conflict of positions and personalities, excruciatingly protracted negotiations, excessive reliance on third parties to resolve problems and issues, and escalating frustration on the part of all those involved in negotiations.

Workload: The primary source of conflict over the years, in the academic unit, has been the workload issue. It surfaced at the inception of the colleges and has remained an issue through the PSA and CECBA years into the CCBA period. Whereas arbitrators tried to resolve it under the PSA and CECBA - albeit reluctantly - it took the free and open collective bargaining environment of the CCBA years for this to be finally negotiated by the parties. It is testimony to collective bargaining that it was eventually negotiated between the parties themselves and not imposed by a third party. In this respect, the decision by the government, following the 1984 strike, to pull this issue out of an arbitrators jurisdiction and establish the Skolnik Committee was a wise one. One may be critical of the actual workload formula and, indeed, of the whole concept of workload formulae, but at least it was one that the parties agreed to themselves. It could not have happened unless the government had indicated its preparedness to fund this formula. It is also reflective of the dynamic nature of collective bargaining that, once negotiated into a collective agreement, a workload clause becomes the basis for further negotiations rather than the final resolution of an issue.

Separation of Negotiation and Administration: The separation of contract administration and contract negotiation continued under the CCBA as it had under the predecessor legislation. Skolnik documented numerous workload problems which required resolution at the local level but which remained unresolved because bargaining over workload took place at the provincial level. This separation continues to cause problems. For example, the collective agreement is negotiated by the Council of Regents, supported by the Staff Relations/Benefits Unit of the Ministry of Colleges and Universities. However, this central unit was unable to provide this Commission with any data on even the number of workload arbitration cases which have developed as a result of this central agreement. The explanation is that such matters are ´local´ and, therefore, of no concern to the SR/BU. This separation of administration and negotiation responsibility could be considered comical if it was not such a serious matter. It is inexcusable for the people who negotiate collective agreements to disassociate themselves from its administration, and vice versa.

Local Bargaining: One encouraging development that occurred within this time period was that of local bargaining within the parameters of the collective agreement. The parties themselves recognized that workload determination depended, at least to some extent, on local conditions. They have allowed for individual colleges and their union locals to negotiate the applicability of the workload provisions (Article 4 of the current collective agreement) at the local level.

Skolnik expressed some disappointment with the extent that the parties had utilized such provisions to develop local agreements when he surveyed this area in 1984/85. It appears that substantial progress has been made since then, probably because the new provincial workload formula forces far more attention on the absolute and equitable distribution of workload.

Third-Party Intervention: The academic bargaining relationship continued to make excessive use of third-party intervention. However, it is important to recognize that a lot of this intervention was mandated by the CCBA and there was no practical way of avoiding it. Nevertheless, one academic agreement required resolution by arbitration and the workload issue required the 'intervention' of a third party in the form of the Skolnik Committee.

4.6 THE PITMAN REPORT[45]

In December, 1985, Walter Pitman was charged with the responsibility of assessing the governance structure of the colleges.

Pitman recommended a re-orientation of the college governance system away from a centralized structure to one more reflective of greater local autonomy and decision-making. Pitman's view was that a centralized college governance structure was not appropriate in light of his perception of the colleges' mandate as requiring rapid response, in a competitive market-place, to provincial, regional and community technological and educational requirements.

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[45] "The Report of the Advisor to the Minister of Colleges and Universities on the Governance of the Colleges of Applied Arts and Technology", by Walter Pitman, June 1986.

For purposes of this report, Pitman made a specific recommendation to the effect that the employer representative, the Council of Regents, re-emphasize its advisory role to the Minister of Colleges and Universities and remove itself from collective bargaining. Further, and in the absence of a concurrence from the government to follow his advice that collective bargaining occur at the local level, Pitman recommended that a representative group of college presidents replace the Council at the bargaining table primarily to create a greater degree of ´ownership´ of the process and ensuing collective agreement. This latter recommendation was implemented for the 1987 negotiations.

4.7 TRENDS IN SALARIES

Over the 12 years of bargaining in the colleges under the CCBA, the academic staff bargaining unit appears to have concentrated its efforts on terms and conditions of employment, rather than monetary gains. Although the percentage increases on the grid indicate consistent increases, a comparison with the Consumer Price Index (CPI) in 1977 dollars shows that teaching masters, counsellors, librarians and instructors have tended to lag behind CPI increases. That situation, however, was not uncommon in Ontario´s educational sectors over that period. The above figures are summarized in Table 4.1.

The support staff have tended to do better than the CPI at the low and middle levels of the classification system. The high end of the classification system has also seen consistent percentage increases on the grid, however when compared to the CPI, it is obvious that this classification grouping has fallen behind (Table 4.2).

4.8 TRENDS IN FUNDING

In 1987/88, operating revenues from government sources (excluding fees and other revenues) for the college system totalled $890

TABLE 4.1

TRENDS IN SALARIES

TEACHING MASTERS[*]

September	1977 Dollars	CPI
1977	100.0	100.0
1978	105.5	108.6
1979	112.9	119.0
1980	123.3	131.7
1981	139.1	148.3
1982	153.0	163.6
1983	160.8	171.7
1984	167.2	178.3
1985	173.9	185.5
1986	179.1	193.2

Source: This table was compiled from information provided by the Financial Support Unit in the College Affairs Branch of the Ministry of Colleges and Universities.

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[*] Counsellors, Librarians, Instructors and Partial-Load all received the same percentage increase on either their respective grids or hourly rate.

TABLE 4.2

TRENDS IN SALARIES

SUPPORT STAFF CLASSIFICATIONS*

	1977 Dollars			
	Clerk A Gen.	Library Tech. A.	Technol C	CPI
Apr 1976	100.0	100.0	100.0	100.0
Apr 1977	106.5	104.6	102.7	107.6
Dec 1977	113.6	109.7	105.7	113.9
Apr 1978	117.0	124.5	108.9	116.6
Oct 1979	140.1	143.9	125.7	133.4
May 1980	147.8	149.4	129.0	141.3
Jan 1981	157.7	156.5	133.1	152.6
Sep 1981	176.5	174.0	147.1	165.0
Mar 1982	188.9	182.8	152.3	174.2
Sep 1983	221.6	210.6	174.3	191.1
Sep 1984	234.6	221.2	181.6	198.4
Sep 1985	250.0	232.2	188.1	206.5
Jun 1986	256.5	237.5	195.0	212.7
Sep 1986	269.8	249.2	204.0	215.0

Source: This table was compiled from information provided by the Financial Support Unit in the College Affairs Branch of the Ministry of Colleges and Universities.

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* Examples are taken from the lowest classification (Clerk A General or PB1), an approximate middle classification (Library Tech A or PB7), and the high end of the classification system (Technologist C or PB11).

million dollars. Of this, the Ministry of Colleges and Universities (MCU) provided $624 million dollars (70.1 percent), the Ministry of Skills Development (MSD) provided $99 million dollars (11.1 percent), and the Federal government provided $167 million dollars (18.8 percent). When fees and other revenues are included[46], MCU provides approximately half of the colleges total revenue.[47]

Table 4.3 indicates that, in 1981 dollars, the level of MCU assistance per full-time-equivalent (FTE) student has increased by 17 percent since 1981/82. However, since 1978/79, the picture is vastly different. The operating grant per student in 1981 was approximately 72 percent of the level in 1978/79. And for 1986/87, the grant per student was approximately 84 percent of the 78/79 level in real terms. Conversely, for each FTE, the colleges have approximately 16 percent less money than they did in 1978/79.

In summary, the college system has seen a reduction in direct grant funding from the provincial government. Although the Ministry of Skills Development has recently added to the total grants received by the colleges, the federal government has decreased its grants to the colleges substantially. It is not yet known if the increase in new funding from MSD can offset the decrease of the federal funds.

These numbers also indicate that, although the colleges are publicly-funded institutions, only about one-half of their total revenue is relatively stable. They are very sensitive to environmental conditions which affect the remaining 50 percent.

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[46] Total revenue consists of MCU, MSD, and Federal operating grants, plus the revenue from tuition and the ancillary operations run by the colleges.

[47] The grant from MCU has decreased from 56 percent of total operating revenue in 1981/82 to 52 percent in 1986/87.

TABLE 4.3

TRENDS IN FUNDING

Provincial Operating Grant Dollars per Full-Time-Equivalent Student

	Current Dollars	Real Dollars (from Sept., 1981)
1981/82	$3305	$3305[1]
1982/83	3403	3082
1983/84	3604	3112
1984/85	4003	3330
1985/86	4348	3476
1986/87	(estimate)5040	3868[2]

[1] This is approximately 72% of the amount the colleges were receiving in 1978/79 (in real terms).

[2] This is approximately 84% of the amount the colleges were receiving in 1978/79 (in real terms).

Source: This table was compiled from information provided by the Financial Support Unit in the College Affairs Branch of the Ministry of Colleges and Universities.

4.9 LESSONS FROM HISTORY

This chapter started with the quotation from Santayana *"Those who cannot remember history are condemned to repeat it"*. It was chosen because there are some clear lessons from the history of collective bargaining in the colleges that can be used to improve industrial relations in the college system.

The first lesson is that free collective bargaining offers a better chance of allowing the parties to work on their problems than does highly restrictive bargaining which terminates in compulsory arbitration. The early awards of the Anderson and Estey panels merely cast into stone the problems which existed at the time. It took free collective bargaining, including a strike, before the parties in the academic unit were able to come to grips with the workload problem and to negotiate a formula. There is no evidence that such free collective bargaining has resulted in salary or benefits increases which are out of line with inflation or other settlements in the public or private sectors. Problems remain to be resolved, but the collective bargaining process is robust enough to handle these issues... provided it is given a chance to work.

The second lesson is that when there are restrictions on bargaining scope which threaten the viability of a bargaining unit, that unit will use every means at its disposal to minimize the threat by expanding its control over terms and conditions of employment. The part-time employees may not be in the academic or support staff bargaining units but the union will still try to negotiate restrictions on the use of such employees, or try to force them to be used at higher cost, because part-time employees pose a threat to the full-time units. In effect, the union is bargaining for, and about, part-time employees even if those employees are not officially represented. It is simplistic to think that restrictions on the scope of bargaining can effectively build walls around issues that threaten the well-being of organized employees.

The third lesson is that highly restricted funding and peaceful employee relations do not blend well together. The real militance in the colleges coincided with severe funding restrictions and the steps that administrators were taking to raise productivity. In a labour intensive business such as teaching, funding restrictions coupled with aggressive enrollment expansion can mean only one thing ... more work for both academic and support staff or the displacement of more expensive staff with less expensive, part-time staff. That is bound to produce problems. No system of collective bargaining will be problem-free under conditions of under-funding.

The fourth lesson is that there are early warning signals from industrial relations systems that governments should listen to and act upon... the ground does begin to tremble before the volcano erupts! The problems in the colleges were pointed out by numerous experts including Anderson, Estey, Swan, Downie, McKechnie, Gandz, Whitehead, and others. They warned of the inadequacy of data, the futility of fact finding, the dangers of the split responsibility for contract negotiations and administration, of serious workload distribution problems, and other symptoms of malaise in the system. They warned of an impending strike. These were people hired at government expense to examine negotiations in the colleges. They made reasonable forecasts based on data which were obvious to everyone who had taken a serious look at the system. They were ignored until a strike actually took place.

The next chapter identifies the current and outstanding issues in colleges' collective bargaining which must be addressed if further problems are to be avoided and if the system can be modified to one where the parties can handle their own problems through bilateral negotiations. There is an opportunity to act decisively at this juncture to make some changes to the system. If the changes are made it should help set a new course for collective bargaining in the colleges. But this new course will, no doubt, encounter its own set of problems and it will require continued sensitivity to the state of employee relations in the colleges if further trouble is to be anticipated and avoided.

5

OVERVIEW OF ISSUES

Analysis of the twenty-two years of collective bargaining in Ontario's colleges, and research done by this Commission, have identified a number of issues that the government and the parties to collective bargaining need to consider and act upon. These issues are defined briefly in this chapter of the report. Subsequent chapters cover each issue in depth and, where appropriate, make recommendations for action.

5.1 THE OUTCOMES OF COLLECTIVE BARGAINING

There has been one strike in each of the academic and support staff bargaining units in the twelve years that they have been free to strike under the provisions of the CCBA[1]. In terms of strike frequency and severity, that record is unremarkable.

But the strike history tells only part of the story. The bargaining relationship, particularly between the colleges and the academic staff, has been stormy. Negotiations have been protracted and there has been excessive reliance on third-party intervention in the form of arbitration, fact finding and mediation at the provincial level. The constant uncertainty about the state of negotiations, accompanied by the intermittent exchange of accusations, denunciations, and propaganda, has been unsettling to staff and students alike. Collective bargaining of this type consumes inordinate amounts of energy and resources which could be devoted to education.

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[1] Colleges Collective Bargaining Act, R.S.O. 1980, c. 74.

The dependence on third parties to resolve disputes has become structurally embedded in both academic and support staff collective agreements. Disagreements about workload and job classification, which should be resolved by the parties themselves, are frequently processed by arbitrators or resolved under the threat of arbitration either at the provincial or local levels.

The academic collective agreement which has emerged from this process of collective bargaining is a masterpiece of rigidity, utilizing a formula approach to workload which will ensure an endless stream of negotiating demands and issues for grievances and arbitrations in the years to come.

Most remarkable, however, is the apparent lack of a constructive, problem-solving relationship between the colleges and the academic bargaining unit at the provincial level, although some colleges have clearly managed to develop good local working relationships despite the turmoil in provincial negotiations. The outcome of this chronic inability to resolve problems is that they recur, time and time again in successive rounds of negotiations. The problems and issues do not appear to be worked on in the time between negotiations to any significant extent. On the other hand, negotiations between the colleges and the support staff bargaining unit have been much more constructive. They have also tended to take longer than they should but it is notable that two agreements have been negotiated for the support staff before the previous ones expired.

Over the years, this regime of collective bargaining has resulted in salary increases which have not been excessive by any standards and, at least over the long-haul, the government funding of the colleges has not shown dramatic increases. To the extent that the 1984 strike prompted the government to inject additional funds to restore the funding to pre-1981 levels, it is tempting to conclude that collective bargaining has had a positive impact on the delivery of education. This conclusion is only tempered by the absence of adequate measures of productivity and the quality of the educational product.

The large group of non-unionized administrative staff in the colleges have had their terms and conditions of employment decided unilaterally by the Council of Regents. There has been increasing dissatisfaction with the amount of consultation in this process and, accordingly, some increased alienation of this important ´middle-management´ group. This is potentially harmful, since it is through this group that the collective agreements must be implemented.

5.2 THE ENVIRONMENT OF COLLECTIVE BARGAINING

Collective bargaining has taken place under three statutory frameworks, the Public Service Act[2], the Crown Employees Collective Bargaining Act[3] and the Colleges Collective Bargaining Act and there has been an evolution toward less restrictive bargaining. This relaxation of various legislative restrictions on the right to strike and the scope of negotiable items has resulted in both revolutionary and evolutionary change in collective agreements. In particular, the 1985/87 agreement was one in which the parties themselves tackled central issues of workload in the academic bargaining unit and job classification in the support staff group. Whatever one might think of the resulting agreements, and the extent to which they build in reliance on arbitration, they were negotiated by the parties themselves.

The current statute, the CCBA, still contains a number of restrictions which adversely affect both the structure and process of collective bargaining. These are identified below, and are discussed in greater depth in subsequent parts of this report. These discussions lead to the conclusion that a special statute to regulate collective bargaining in the colleges is needed, but that the CCBA should be substantially amended.

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[2] Public Service Act, 1961-62, c. 621.

[3] An Act to provide for Collective Bargaining for Crown Employees, 1972, c. 67.

The history also demonstrates the ambiguous and highly questionable role of the government in collective bargaining in the colleges. At various times it has been the uninvolved funder of the system, while at other times it has been very directly and, through the (then) Ministers of Colleges and Universities, personally involved in negotiations. The argument will be made that stable collective bargaining requires a defined and predictable role for the government, and recommendations in this regard are made.

The worst turmoil in collective bargaining in the colleges occurred during a period of acute and severe under-funding of the college system by the government of the day. The point will be made that 'free' collective bargaining requires adequate funding or some other policy direction, such as restricted access, for it to be free of strikes or lock-outs.

5.3 THE STRUCTURE OF COLLECTIVE BARGAINING

Legislation and other government actions and initiatives have had an impact on many aspects of the structure of collective bargaining in the colleges.

Negotiations have been conducted at the provincial level, with the Council of Regents acting as the bargaining agent for the colleges. This has resulted in a sense of lack of 'ownership' of the resulting agreements by the colleges who have never viewed the Council as their legitimate representative. Furthermore, since the colleges administer the collective agreement, there is split responsibility for contract administration and contract negotiation. This creates problems at the provincial negotiating table and at individual colleges. The 'ownership' issue is a central one. Unless those who live with and work under a collective agreement have a real sense that it was negotiated by them, or their legitimate representatives, then there will be minimal commitment to honouring both its letter and its spirit.

The legislative framework of collective bargaining has also had the effect of excluding certain large groups of employees from exercising their collective bargaining rights. Apart from whatever injustice this represents, it has contributed to problems in collective bargaining because of the desire by the Union to represent such employees, and their perceived need to limit the use of such excluded employees so that they can protect and improve the rights, terms, and conditions of work of its membership.

The CCBA, as did predecessor legislation, prohibits collective bargaining over pensions or superannuation. This has been a sore spot with the Union for many years and, in this era of pension reform, the rationale for such an exclusion requires intensive examination.

The College Relations Commission has never been able to fully exercise even its limited mandate under the existing legislation because of inadequate funding and questionable acceptance of its role by the parties. The recommendations for alterations in structure and process made in this report call for an extended and invigorated role for the CRC.

5.4 THE PROCESS OF COLLECTIVE BARGAINING

The CCBA specifies a rigid set of timelines and procedures for collective bargaining including specifying the contract expiry date, making fact finding compulsory, and requiring votes on the last offer received from the employer. The analysis and research indicate that these timelines and procedures may actually contribute to delaying progress in negotiations. Certainly they do not put any pressure on the parties to reach an accommodation either before, or within a reasonable period of time after, the previous contract has expired.

A second process issue is the way in which the colleges organize for and conduct collective bargaining. This is related to the structural issue of the designation of the Council of Regents as the bargaining agent. Together they lead to lack of adequate preparation for bargaining, gross deficiencies in required information, and too much uncertainty about the real ´bottom line´ position of the colleges.

5.5 INFORMATION

In the absence of valid and reliable information, collective bargaining cannot have a rational basis. Opinion and emotion - always factors in collective bargaining - completely predominate. It is quite apparent that neither the parties, nor the government, nor the College Relations Commission, have had the data base or the analytical capacity to provide the type of information that the parties themselves and the mediators, fact finders, and arbitrators who get drawn into their bargaining, require.

5.6 PEOPLE

The optimum environmental framework, structure, bargaining process and information base will not result in constructive and mature employee relations if the people involved are not prepared to seek peaceful resolution of their differences and control their emotions and behaviours. The sharp contrast between support staff and academic staff bargaining in the colleges has been as much a contrast between personalities and styles as it has between issues of substance.

6

COLLECTIVE BARGAINING AND COLLEGE GOVERNANCE

Before presenting the Commission's detailed analysis of these issues and the recommendations for change, it is worth reflecting on a much broader issue, albeit one which is more philosophical in nature. Collective bargaining and governance in post-secondary educational institutions is the focal point of controversy.[1] The debate usually takes the form of whether collective bargaining and collegiality can co-exist in a college or university setting. In this debate, collective bargaining is viewed as an adversarial process while collegiality is perceived as joint problem-solving and shared decision making.

The debate focuses on a number of theoretical and empirical questions. First, is collegiality a myth or does it really exist in some institutions? Second, can realistic distinctions be made between consultation, advice and decision-making? Third, does shared authority require shared responsibility and is it realistic for a union to share responsibility for adverse consequences for its members which might emanate from program reductions or other productivity improvements? Fourth, are there clearly issues which are legitimately in the bargaining domain and others which are in the realm of collegiality?

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[1] See for example: (i) "Scope of Collective Bargaining: Implications for Traditional Faculty Governance - I"; James P. Begin; "Scope of Bargaining: Implications for Traditional Faculty Governance - II"; Jerome Lekfowitz "Landmarks in Collective Bargaining in Higher Education"; Proceedings of Seventh Annual Conference. (New York, New York: The National Center for the Study of Collective Bargaining in Higher Education, April 1979); (ii) "Faculty Governance and Collective Bargaining", National Education Association (NEA), 1982; (iii) "Faculty Collective Bargaining: A Status Report: J.W. Carbarino, in Unions in Transition: Entering the Second Century, S.M. Lipset (ed.), San Francisco, Calif.: Institute for Contemporary Studies, 1986; (iv) "Effects of Faculty Unions on Administrators' Attitudes Toward Issues in Higher Education", B.J. Wilson, III, W.H. Holly, J.S. Martin in Journal of Collective Negotiations in the Public Sector v.12 n.3, 1983; (v) "A Question of Governance: Five opinions on faculty participation in directing higher education" in Academe vol. 68, n.1, January-February, 1982 pp.3-12; (vi) "Collective Bargaining on the Campus - The Tip of the Iceberg", T.A. Shipka in Proceedings of Second Annual Conference, (New York, New York: The National Center for the Study of Collective Bargaining in Higher Education, April 1974).

While the controversy remains unresolved, it is clear that it is based on the assumption that in many universities some form of collegiality pre-existed the advent of collective bargaining and that the advent of collective bargaining changed all of this. Such, however, was not the case in Ontario colleges. When the colleges were established, there was no legislative provision for the creation of the traditional governance structures, such as senates, for the colleges. College governance was achieved through a (then) Minister of Education/ Council of Regents/Board of Governors centralized nexus whereby the colleges' programs, services and funding were effectively controlled by the Ministry. Moreover, the Council of Regents, established as an advisory body to the Minister, developed policies pursuant to Regulation 168/65, concerning personnel matters in the colleges. As a result, the local Board of Governors had only a minimal role in college educational or personnel policy matters. This view of the colleges' governance stands in sharp contrast to Ontario's universities which operate under their own Acts and whose boards of governors have full responsibility for personnel matters. In effect, there never was a university-style governance structure established in the colleges when they were created.

Both the Skolnik and Pitman reports addressed governance and made recommendations to enhance collegiality. In the Skolnik report[2], ten recommendations were made under the heading "College Organization and Management". Moreover, six recommendations specifically addressed issues appropriate for decision-making with collegial governance structures as opposed to collective bargaining structures:

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[2] "Survival or Excellence: The Report of the Instructional Assignment Review Committee", by Michael Skolnik, Chairman, July 1985, pp. 124-128.

> *Each college should establish an academic council to develop, consider, recommend and monitor academic policies of the college.*
>
> *The colleges should, through their academic councils, establish mechanisms and procedures for the systematic review of the quality and relevance of all programs on a periodic basis, and appropriate faculty time should be allocated for the reviews.*
>
> *That the mechanisms and procedures [referred to in Recommendation 4] should include provision for student participation in program review and course evaluations.*
>
> *The colleges, through their academic councils, should develop mechanisms and procedures for evaluation of faculty performance.*
>
> *Each college should develop on an annual basis, a professional and curriculum development plan complete with identification of development needs, strategies to meet these needs, budget, and accountability mechanisms for these activities.*
>
> *Chairpersons and deans (or persons in comparable positions with different titles) should be appointed for a fixed terms, subject to review, and faculty should participate in their selection and review.*

The remaining four recommendations addressed faculty professional development and training.

In Pitman's view,[3] the governance structure established in 1966 under the aegis of the Minister of Colleges and Universities, the advisory Council of Regents, and a local Board of Governors, was similar to authority structures within industrial organizations with an emphasis on the "*bottom line*", "*entrepreneurism*", "*immediate response to market needs*", and on bureaucratic models at the expense of recognizing the colleges as learning institutions. It was Pitman's contention, however, that this type of governance structure *"is less than supportive of ... well meaning efforts to encourage some level of collegiality".*[4]

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[3] "Report of the Advisor to the Minister of Colleges and Universities on the Governance of the Colleges of Applied Arts and Technology", by Walter Pitman, June 1986, p. 4.

> *"During the past two decades, there has been a significant growth in scale in program offerings and in clientele ... With ever increasing demands from expanding clientele, and fewer resources per student activity, those who teach and those who support the teaching function, have been driven to collective bargaining, in an attempt to ensure that their wages and the quality of their working conditions were not eroded beyond hope.*
>
> *"The declining morale of faculty and support staff, of middle management, indeed of presidents and governors, has become the major threat to the continuing capacity of the colleges to serve this province."*

As can be seen, Pitman was of the view that the colleges' governance system was ill-suited to the demands being made upon the colleges and, in fact, inhibited effective governance. Thus, Pitman believed that the colleges:[5]

> *"require a governance structure that exudes integrity, fosters collegiality, and clarifies the lines of responsibility in a context of tough decisions to be made and a system ridden with low morale and prevailing tensions."*

Pitman outlined five principles behind a renewed colleges governance structure:

- facilitating highly competitive quality in education;
- responsiveness to the community;
- flexibility in a changing society;

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[4] "Report on Governance", pp. 2 and 4.

[5] Ibid., p. 6.

- guided by long range planning;
- structural links that will encourage various levels to work towards mutual goals.

In light of these principles, Pitman recommended that the governance structure shift towards greater local autonomy on the part of the colleges. He recommended that the Council of Regents distance itself from the day-to-day activities of colleges and in particular, remove itself from collective bargaining. Its new role was to be essentially advisory and visionary in regard to future directions. Pitman also recommended that the local college board of governors membership be restructured so as to include internal college representation and that an academic council in each college be created. This council moreover, was to be representative of all communities within the college.

Further, Pitman recommended the establishment of a Committee of College Policy composed of the chairmen of the local boards of governors and a Committee of College Operations composed of the colleges' presidents. Finally, in regard to governance, Pitman recommended formal liaison structures between the colleges and the Ministry of Colleges and Universities.

Pitman's renewed governance structure intended to dismantle the Minister of Colleges and Universities/Council of Regents/Board of Governors nexus, with its focus on centralization, to a more decentralized and self-directed system with greater local college autonomy. In line with this orientation, Pitman also recommended that collective bargaining change from a centralized to a decentralized structure.

Taken together, Skolnik and Pitman outlined, in both broad and specific recommendations, a rudimentary collegial system for each college and the types of issues that should be addressed within that structure as opposed to the collective bargaining structure. A distinction between the two reports is that Skolnik's recommendations were directed solely at the local college level while Pitman's included recommendations in regard to system governance structures including the Committee of College Policy and the Committee of College Operations, the modified mandate of the Council of Regents and formal liaison relationships between the colleges and the Ministry of Colleges and Universities. On the other hand, both Skolnik and Pitman believe that collective bargaining structures should be decentralized to the local college level, viewing this decentralization as essential in promoting and enhancing local autonomy.

The issue of whether negotiations should be conducted on a provincial or local basis is fully discussed in Chapter 9, below. However, whether it takes place on either or both of these levels, the position of the Commission is that a collegial governance structure can coexist with collective bargaining if the parties to the relationship want them to coexist and are prepared to recognize the value and limitations of both of them.

The early literature on trade unionism, raised the question of the existence of 'dual loyalty' - loyalty to the employer and the union. It also answered the question. Unless the unionism is ideologically rooted in the class struggle, loyalty to employer (or institution) does not have to be at the expense of loyalty to the union, although they may each exert their forces of attraction in opposite directions at certain times and under certain circumstances.

There are many unionized universities in Ontario, other provinces in Canada, and in the United States and the U.K. Faculty and staff negotiate salaries, benefits, tenure, and other terms and conditions of appointment and service. Concurrently, senates or other forms of academic councils deal with a variety of program, academic standards, and other matters including whether programs should be added or discontinued. Faculty and staff associations are generally recognized as important contributors to such councils but are not allowed to dominate them in terms of numbers of representatives.

Does this cause problems when decisions of the governing councils are not pleasing to the unions? Of course it does! But that is a natural and normal state of affairs. If a program is discontinued one must anticipate that a union will oppose such a decision or at least seek the maximum protection for those of its members who are adversely affected. To suggest that the union must feel that it has to welcome the decision made by a governing council is to deny the reality of the pluralistic nature of post-secondary educational institutions. The idea that a union's failure to support actions taken by governing bodies of which the union is a part represents an act of treachery or irresponsibility is, frankly, naive. Total subordination of the legitimate role of a trade union should not be a pre-requisite for attempting the types of reform of college governance that Pitman and Skolnik recommended and that the government, in its regulations establishing college councils,[6] has started to promote.

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[6] Regulation 640 as amended by Regulation 196/87.

7

THE GUIDING PRINCIPLES OF REFORM

In recommending reforms to the colleges collective bargaining structure and amendments to the Colleges Collective Bargaining Act[1] the following principles have been followed:

- Recommendations have been formulated with a view to preserving and, wherever possible, enhancing the quality of education offered to the public.

While this Commission was concerned with collective bargaining structure and process, it has always been aware that collective bargaining has an impact on the reliable delivery of high quality education to the college students in Ontario. That quality of education requires that, as far as possible and consistent with the fundamental rights of employees to engage in collective bargaining, the colleges remain operational and that faculty and administration personnel maximize the time spent on educational concerns rather than in collective bargaining activities.

- Efforts have been made to make recommendations which will be generally acceptable to the principal parties to collective bargaining, including the college administrations and the unions representing academic and support staff.

The conventional wisdom is that the best kind of bargaining structure and process is one that the parties to collective bargaining want. It is therefore desirable that the parties to collective bargaining accept the legal and administrative framework of collective bargaining as legitimate and reasonable.

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[1] Colleges Collective Bargaining Act R.S.O. 1980, c. 74.

- Where recommendations have been made which are not generally acceptable to the principal parties in collective bargaining, it is because there are clearly overriding benefits to current and future students of the colleges and the general public.

While OPSEU and the colleges are the parties **to** collective bargaining, they are not the only parties affected **by** collective bargaining. Others affected include students, non-unionized staff who are excluded from the bargaining units, administrative personnel, and the government as the representative of the general public. Sometimes this has meant that recommendations have been made which may prove to be unacceptable to one or both of the principal parties. Such action has not been taken lightly.

- Efforts have been made to avoid a legislative straitjacket which would preclude further growth and development of bargaining along lines which might be beneficial to all parties and stakeholders.

The colleges in Ontario are dynamic organizations, changing and expected to change in the future in response to evolving needs for education and skills in the post-secondary and mature student populations. The statutory framework must be one which allows this development to take place, unfettered by restrictive and overly confining legislative provisions.

- The process of free collective bargaining should be encouraged.

Collective bargaining, including the right to strike and lock-out, is more likely to lead to problem resolution over the long-haul than is interest arbitration. Education is not an ´essential service´ in the sense that its withdrawal has an impact on life or health or has a crippling effect on economic life and, therefore, there is no compelling reason to withdraw this right to strike or lock-out.

- No-one should be denied the right to participate in collective bargaining solely because of the potential economic costs of allowing this right.

The right to participate in collective bargaining is a fundamental right. While there may be other reasons for excluding employees from collective bargaining rights - such as their status as managerial employees - it is simply unjust to deny this right based on the hypothetical costs that might be incurred by granting it.

8
THE COLLEGES COLLECTIVE BARGAINING ACT

When the college system was established, the original intention was to conduct negotiations and certification under the Ontario Labour Relations Act[1] (LRA)[2]. In view of the significant changes that this Commission is recommending for collective bargaining structure and process, the question must be raised as to whether there should even be a Colleges Collective Bargaining Act[3] (CCBA). This question is particularly pertinent since many of the recommendations about bargaining structure and process that the Commission makes suggest bringing the CCBA much closer to the LRA in form and substance.

8.1 CURRENT STATUS

Both the academic and support staffs bargain under a special piece of legislation, the Colleges Collective Bargaining Act (CCBA). This legislation differs from the Ontario Labour Relations Act[4] (LRA) in a number of key respects:

- Province-wide bargaining units are designated within the CCBA rather than being left open to be decided by the certification procedures established in the LRA and through the emergent jurisprudence of the Ontario Labour Relations Board.
- Special procedures for contract negotiations are designated, including extended notice to bargain, a specified expiry date for collective agreements, a

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[1] Labour Relations Act R.S.O. 1960, c. 202.

[2] See Chapter 4.2 for a description of the relevant events.

[3] Colleges Collective Bargaining Act R.S.O. 1980, c. 74.

[4] Labour Relations Act R.S.O. 1980, c. 228.

process of compulsory fact finding, and supervised last offer received and strike votes. Unlike the LRA, the CCBA has no provision for a vote at the employer's request on a last offer provided by the employer.

- When a strike or lock-out occurs under the CCBA, no employee who is a member of the bargaining unit can be paid. This is, in effect, a very powerful 'no scab' provision which does not exist in other provincial labour legislation.
- A special agency, the College Relations Commission (CRC) is designated to fulfil three roles. First, it has a supervisory function, gathering statistics on various aspects of compensation and working conditions, monitoring collective bargaining in the colleges and reporting to the public on a periodic basis. This includes advising the government when a state of 'jeopardy' exists to students' education as occurred in the 1984/85 strike. Second, it has an active role in training and providing third-party assistance in the form of field officers, fact finders and mediators, sometimes on a compulsory basis and sometimes at the behest of either or both of the parties. Finally, it has a quasi-judicial role in deciding matters of bad faith bargaining. The first and second of these do not happen under the LRA and the Ontario Labour Relations Board handles bad faith bargaining charges in disputes under its jurisdiction.

8.2 DISCUSSION

The Colleges Collective Bargaining Act heralded an era of less-restrictive collective bargaining in the colleges when it was introduced in 1975. The experience of the parties under this statute has been reviewed extensively in previous chapters of this report and will not be repeated here. However, certain elements in this experience are worth emphasizing.

The parties have been able to address their recurrent problems, such as workload and job classification, themselves. In successive rounds of negotiations they have fashioned their own solutions in ways that no arbitrators were able to do under the PSA[5] or CECBA[6].

While the rights to strike and lock-out were given with the introduction of the CCBA, they have been used sparingly, only once in each bargaining unit. There is some strong evidence that the pressure on the parties to negotiate under realistic threats of such sanctions has resulted in serious and creative collective bargaining. There is a clear recognition by all the parties to collective bargaining in the colleges that the government has the authority and the will to step in, on an *ad hoc* basis, when the use of sanctions is judged to be too damaging to the primary, educational mission of the colleges.

Negotiations have been protracted under the CCBA, as they were under predecessor statutes. But this, and the excessive reliance on third parties seems to be as much the consequence of provisions within the CCBA as they are of other, exogenous factors. Indeed the CCBA virtually guarantees long, drawn-out negotiations and the routine utilization of fact finders and mediators. The lack of 'ownership' of collective agreements, and the separation of responsibility for negotiations and contract administration are also results of the structure of the CCBA.

It is quite clear that for these, and other reasons relating to changes in college governance and the status of part-time employees, the CCBA needs significant amendments. Professor Rose, in his study for the Commission, suggests that the CCBA should simply be eliminated and that collective bargaining in the colleges be allowed to take place under the jurisdiction of the LRA. This recommendation reflects an orientation to totally

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[5] *Public Service Act*, 1961-62, c. 121.

[6] *An Act to provide for Collective Bargaining for Crown Employees*, 1972, c. 67.

´free´ collective bargaining in which the parties themselves can utilize a wide variety of approaches to negotiating and are relatively free to use the strike and lock-out as and when they see fit.

Such an approach has some appeal. After all, the LRA is a tried and tested piece of legislation. The OLRB is a skilled and experienced quasi-judicial body with a stable jurisprudence. The Ministry of Labour arbitration, mediation and conciliation staff also have considerable expertise.

Balanced against this, however, is an argument that public sector disputes affecting such serious issues as education are too important to be left solely to the official ´parties´ to collective bargaining to sort out between themselves. This argument holds that special legislation with special provisions to protect the public and minimize the use of sanctions is required.

8.3 RECOMMENDATIONS[7]

Subsequent chapters of this report will contain various recommendations which will, in many respects, bring the CCBA closer to the LRA in terms of many of the provisions for collective bargaining structure and process.

The recommendations that are made in this chapter are designed:

- to encourage free and unrestricted collective bargaining in the colleges;
- to protect the public´s interests in any dispute between the parties in the public sector;

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[7] All recommendations marked with an asterisk (*) indicate that legislative change will be required.

- to promote orderly and cost-effective collective bargaining in the college system.

Recommendation #1*

An amended Colleges Collective Bargaining Act should be introduced.

This amended Act should retain certain key features of the current Act, including the right to strike and lock-out, the deemed strike provision, and designated bargaining units.

Major amendments should include a newly designated bargaining agent for the colleges, reconstructed bargaining units, unrestricted scope of bargaining, the encouragement of local bargaining to supplement or vary the provincial agreement, and radically altered timelines and procedures governing strikes and lock-outs.

8.4 BASIS OF RECOMMENDATIONS

8.4.1 A Special Act

The decision to have a separate and distinct piece of legislation is not a straightforward one. It is relatively expensive, requiring a special body, the College Relations Commission, which needs to be funded adequately if it is to fulfill its mandate. Second, each Act spawns its own jurisprudence and where the jurisprudence is new, excessive litigiousness tends to occur as the parties seek its clarification and case law is developed in its application. Third, the LRA works. It is generally considered to be a good piece of labour legislation which, through many amendments, appears to have stood the test of time. The major parties appear to be happy with most of its provisions and there is a stable yet progressive development of jurisprudence under it.

However, a special Act is recommended for several reasons. The LRA is essentially a 'hands-off' piece of legislation whereas the CCBA is more interventionist and controlling. There is a general expectation that the government will control public sector bargaining tightly. This has been seen, for example, in disputes involving the Toronto Transit Commission where governments - of whatever political persuasion - have given the right to strike under the LRA but been quick to threaten to rescind it when the union in a public sector environment decides to exercise that right.

Second, the public has a right to know what is going on in public sector labour disputes and, therefore, an active fact finding function is necessary. Furthermore, the history of collective bargaining in the colleges suggests that a good part of the problem has lain in the absence of reliable, valid data in which both parties can develop some trust. These data should be provided by a neutral agency rather than the bargaining agent for the colleges or even the Ministry of Colleges and Universities. Both of these functions are best performed by a neutral agency such as the College Relations Commission and this alone would require special legislation.

Third, the bargaining structure which this Commission recommends creates a distinction between the government as the paymaster and policy formulator and the government as a party in collective bargaining. This orientation necessitates putting some considerable distance between the government and the bargaining agent for the colleges. Yet the government has vital interests in the outcomes of collective bargaining. Therefore, a 'window' on negotiations is needed and the College Relations Commission can be such a window.

Fourth, collective bargaining in the educational sector is different from industrial or even white collar collective bargaining. It requires a special understanding of the educational context and some empathy for teachers, support staff, and administrators. For this reason, specialized third-party assistance is likely to be more effective than the highly skilled but general industrial relations assistance which the Ministry of Labour provides.

Finally, there are specific provisions - such as those for structuring educationally appropriate bargaining units, for the creation of a specific and compulsory employer's association, and for the declaration of 'jeopardy' by the College Relations Commission, as well as for retention of the 'deemed strike' provision - which would require extensive amendments to the LRA. It is more expedient to amend the CCBA than to make major changes to the LRA.

8.4.2 The Right to Strike and Lock-out

The Commission recommends that the right to strike and lock-out remain as a feature of the amended Act. This recommendation is based on the assessment that post-secondary education is not an essential service. While a strike or lock-out in the colleges may cause great inconvenience and some hardship, they do not pose threats to safety, health, or vital economic interests.

The government of Ontario has refused the right to strike or lock-out to its own employees, making them submit any unresolved disputes to binding third-party arbitration. However, the provincial government has extended the right to strike and lock-out to public sector employees in school boards, municipalities, and Crown agencies such as the Ontario Hydro Commission.

The government also has been prepared to utilize back-to-work legislation where such public sector disputes have posed serious, long-term dangers or major inconvenience. Several school board disputes,[8] as well as the college strike in 1984/85,

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[8] Six public education collective bargaining negotiations disputes under the SBTCNA, 1975 have been ended by

(Footnote Continued)

were terminated by back-to-work legislation when the government determined that the cost of allowing the parties to continue in a strike or lock-out situation was too high. This option, while it should be used sparingly, always exists and the government can receive advice about the extent to which the students' education is in jeopardy through the College Relations Commission.

'Deemed Strike' Provision

The Commission recommends retention of the 'deemed strike' provision of the CCBA. While this was originally intended to ensure that all colleges would close in the event that a majority of members of the bargaining unit voted to strike, it has also served the purpose of preventing fragmentation of the staff into 'strikers' and 'scabs', ugly picket-line violence, and residual feelings of antagonism after a strike. The 'deemed strike' provision forces every member of the bargaining unit to adhere to the collective decision. The Commission feels that this also creates a sense of involvement in that decision. It also deters the colleges from gambling that they can break a strike by encouraging employees to cross a picket-line.

OPSEU is a highly democratic union and the bargaining units are large enough to be viable as bargaining units either within OPSEU, affiliated with other unions, or as independent unions or associations. Under the CCBA, the bargaining units can vote for decertification if the majority of the members are dissatisfied with the actions of the union leadership. These are sufficient guarantees that the decision to strike will not be taken lightly. In a subsequent chapter of this report (14) the Commission recommends that the voting procedures on a last offer be altered, and this action will also reinforce the requirement for the union to act responsibly in taking strike action.

(Footnote Continued)
back-to-work legislation. Five in 1976 and one, An Act respecting the Wellington County Board of Education and Teachers Dispute, in 1985.

8.4.3 Designated Bargaining Units

The Commission also recommends that there be designated, but substantially amended, bargaining units as opposed to allowing the bargaining units to evolve under less restrictive legislative provisions. This recommendation is tied in with others concerning the locus of bargaining and the composition of the bargaining unit. However, it is also motivated by the recognition that this is a provincial college system and that excessive fragmentation of collective bargaining would undermine this, creating a multiplicity of bargaining units and a much more complex bargaining scene.

8.4.4 Amendments to the CCBA

The basis for these recommendations is explained in detail in subsequent chapters of this report.

9

LOCUS OF BARGAINING

A fundamental behavioural proposition is that people only fully understand and develop commitment to a decision when they have meaningful involvement in making it. This concept can be extended to collective bargaining. Unless those who must live with a collective agreement have some involvement in its negotiation, they will be unlikely either to understand it, or to administer within its letter and spirit.

It has been suggested by many observers that collective bargaining in the colleges is complex, time-consuming, and ineffective because negotiations take place at a provincial level, rather than at a local level.[1] The case can certainly be made that local-level agreements should be negotiated between those who have to live and work with them, in order that they can be tailor-made to suit local situations. The purpose of this chapter is to recommend whether collective bargaining should be conducted:

- on a **province-wide** basis between the employee representative and a designated bargaining agent for the colleges;
- on a **local** basis, between each college and the local employee representative;
- on a **two-tiered** basis, in which some issues are negotiated provincially and others on a local basis;
- on some other basis such as **two-stage**, **master-local**, or **local variation** bargaining.

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[1] Downie, Gandz, and Whitehead each dealt with this issue in their academic unit fact finding reports.

9.1 CURRENT STATUS

Collective agreements are negotiated in Ontario at the system-wide level between the Council of Regents, acting as the bargaining agent for the colleges, and their academic and support staff bargaining units, currently represented by OPSEU. Neither the CCBA[2], nor its predecessor statutes disallowed local bargaining. A survey conducted by the Commission indicates that 12 of the colleges currently have some form of written local agreements with their academic units. In some cases these are clearly **supplements** to the provincial agreement, while in others they are **variations** on the provincial agreement. For example, Fanshawe College has a supplementary agreement covering job sharing, while Humber College has a local agreement which allows work done in excess of the provincial agreement limits to be compensated with time off instead of overtime pay, as is stipulated in the provincial agreement. A summary of the various types of local agreements found in the colleges is presented in Table 9.1.

9.2 THE POSITIONS OF THE PARTIES

OPSEU is totally and vehemently opposed to any form of local bargaining unless it takes place under the collective agreement.[3] There are several reasons for this strong opposition:

- OPSEU fears that local agreements would undermine the provincial agreement. Locals may be tempted to give up rights and benefits which had been previously negotiated and, perhaps, 'paid for' with concessions or strikes.
- OPSEU would have a responsibility to process grievances, up to and including arbitrations, for such local agreements which they may have had no part in negotiating and with which they may not agree.

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[2] Colleges Collective Bargaining Act, R.S.O. 1980, c. 74.

[3] OPSEU submission to the Commission, June 1987.

TABLE 9.1
SUMMARY OF LOCAL AGREEMENTS

	CHANGES TO MAXIMUMS	CHANGES TO OVERLOAD	PROGRAM SPECIFIC	WORKLOAD MONITOR GROUP	CONTINUING EDUCATION	CLASSIFICATION	COMMITTEE WORK	DURATION	WORKLOAD	UNION BUSINESS	OTHER	TOTAL
Algonquin									1			1
Cambrian						1						1
Canadore												0
Centennial												0
Conestoga												0
Confederation	2	1		1	1					1	2	8
Durham												0
Fanshawe			1		1	1		1			5	9
George Brown	1	1	1					1				4
Georgian												
Humber		1	1	1		1		2		1	4	11
Lambton		1										1
Loyalist	1		2	3			1		1			8
Mohawk			6									6
Niagara												0
Northern												0
St. Clair												0
St. Lawrence		1									3	4
Sault Ste. Marie			3	1			2					6
Seneca			1								1	2
Sheridan			1							4	1	6
Sir Sandford Fleming		1	5	1			2					9
TOTAL	4	6	21	7	2	3	5	4	2	6	16	76

Source: Survey conducted by Colleges Collective Bargaining Commission, July 1987.

- Locals or individual members of locals who did not have as attractive local agreements as other locals might put pressure on OPSEU central to negotiate similar agreements. However, OPSEU may be unable to deliver them at all colleges. This would introduce an element of complexity into demand setting and the conduct of provincial negotiations.
- Extensive local bargaining could, over some period of time, result in a plethora of local agreements which would obscure the main characteristics of the provincial agreement. This would make the administration of collective agreements more difficult.
- OPSEU would incur additional expense if it had to conduct 44 sets of negotiations (22 for support staff, 22 for academic staff) instead of the two sets that it currently conducts.

Notwithstanding the above, the key factor in OPSEU's opposition to local collective bargaining is power. Put simply, OPSEU believes that it can exert the greatest power, and gain the most for its members collectively, if bargaining is organized and controlled centrally. It is prepared to tolerate local bargaining, but only to the extent that the elected leadership of OPSEU considers it to be in the interest of the bargaining unit members as a whole. Furthermore, OPSEU believes that the only way to ensure that the greater interest is served is if it can retain its status as the sole bargaining agent.

The Committee of Presidents, ACAATO, and the Council of Regents also oppose local collective bargaining. Consultations with them indicate, however, a range of views, and a desire to encourage some form of local negotiation or discussion.[4] This opposition to local bargaining stems from:

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[4] The brief submitted to the Commission from the Committee of Presidents indicated that 19 preferred centralized bargaining and three (Sault, Conestoga and Sir Sandford Fleming) preferred some form of local bargaining. Subsequent consultations indicated that several more presidents were interested in some limited local bargaining but the overall sentiment favoured provincial negotiations.

- A fear of whipsawing or leapfrogging as one union local seeks to make gains which have been negotiated by another, resulting in an upward spiral of salaries, benefits, or costly working condition concessions.
- A belief that a strong OPSEU would be successful in coordinating the negotiations of each of its locals, thereby magnifying the whipsawing and leapfrogging effects.
- Concerns that, by pitting one college against another, competition would occur between the colleges for staff and programs. This would force some of the smaller and more vulnerable colleges to drop certain programs and activities.
- The additional and substantial expense that each college would have to incur to build the necessary expertise required to bargain locally.

While not openly expressed during consultations, another reason for the colleges' opposition to local bargaining is the fact that it would further unlink the colleges from the funding sources - the Ministry of Colleges and Universities (MCU) and the Ministry of Skills Development (MSD). The presidents of many colleges see considerable advantage to ensuring that OPSEU's demands are aggregated and presented centrally, preferably directly to MCU or some agency such as the Council of Regents, believing that direct presentation and negotiations will ensure that appropriate funding will be forthcoming.

OPSEU has taken the position that the extent of local bargaining should be left to the parties to decide and should be regulated through the collective agreement. They point to the current language[5] as indicative of the parties' recognition of the value of local agreements and argue that this is sufficient. However, OPSEU has recently been trying to negotiate an amendment to the provincial academic agreement which would make all such local agreements subject to approval by the Employee/Employer Relations Committee and, therefore, effectively under OPSEU central control. It is just this sort of attempt to gain central control over local bargaining which exposes the fragile nature of the current arrangement.

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[5] See Article 4.02(7), 14.03, and 29.02 in the 1985/87 academic agreement, and Articles 4.02(1), (2), and (3) in the 1985/87 support agreement.

9.3 A RESEARCH PERSPECTIVE

Four of the external research reports conducted for the Commission commented on various consequences of local and centralized bargaining. These reinforce, to some extent, the fears and concerns of the parties. They also minimize some of those concerns, particularly with respect to the whipsawing issue.

These external research studies addressed two primary questions:

- What are the consequences of local and central bargaining structures in public sector organizations, with specific reference to colleges and similar institutions?
- What are the key determinants of the choice between local and central bargaining structures?

9.3.1 Other Jurisdictions

There is no common structure for collective bargaining in post secondary education in Canadian jurisdictions, in jurisdictions of the United States which have special legislative provisions governing colleges, or in the United Kingdom.

Canadian colleges tend to be evenly divided between system-wide and local collective bargaining structures. Ontario, Saskatchewan, Manitoba, New Brunswick and Newfoundland use a system-wide structure for collective bargaining in colleges. Local-level bargaining occurs in British Columbia, Alberta, and

Prince Edward Island. Quebec has a two-tier model for its CEGEP[6] system.

In the 26 U.S. jurisdictions where enabling legislation exists for colleges' collective bargaining, 7 jurisdictions employ a system-level structure, while the remaining 19 provide for local-level bargaining. In two jurisdictions, Arizona and Missouri, bargaining occurs at the local level as a result of individual college policy, as opposed to enabling legislation. Figure 9.1 summarizes the locus of collective bargaining in North American jurisdictions.

In the United Kingdom, negotiations for minimum levels of salaries and benefits, as well as for basic terms and conditions of employment, take place between associations of colleges and their unions who participate in National Joint Councils. These very large groupings of delegates, from many colleges and several different unions, meet to negotiate on an irregular basis, more or less when one of the 'sides' feels that it is appropriate to do so. The resulting agreement is not technically binding on any employer or union, although they do tend to respect its terms. However, negotiations on matters such as workload, vacations, class sizes, placement on salary grids, and many other issues take place at the local college level. Furthermore, the existence of a joint national agreement does not prevent any college or local union from exercising 'industrial action' - the term used in the United Kingdom to denote anything from a full-scale strike to a boycott of local college meetings.

Patterns in the Public Sector

Mark Thompson, in his study entitled "The Role of The Employer in Public Sector Bargaining Structures: Theoretical Considerations"

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[6] Colleges d'enseignement general et professionnel.

FIGURE 9.1
LOCUS OF COLLECTIVE BARGAINING IN NORTH AMERICAN JURISDICTIONS

System-Wide Jurisdictions

(i) CANADA: Manitoba, New Brunswick, Newfoundland, Ontario, Saskatchewan

(ii) UNITED STATES: Alaska, Connecticut, Hawaii, Maine, Massachusetts, Minnesota, Vermont

Local-Level Jurisdictions

(i) CANADA: Alberta, British Columbia, Prince Edward Island

(ii) UNITED STATES: Arizona[1], California, Florida, Illinois, Iowa, Kansas, Maryland, Michigan, Missouri[1], Montana, Nebraska, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Washington, Wisconsin.

Two-Tier Systems

(i) CANADA: Quebec

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[1] Local negotiations occur on the basis of local college policy since no enabling legislation exists.

examined the issue of bargaining structures, with an emphasis on multi-employer organizations in the public sector. Thompson's study indicates that when colleges have been established as a result of administrative fiat (Ontario), as opposed to local community pressures (British Columbia and Alberta), the tendency has been for the collective bargaining structure to be centralized, therefore allowing the government a significant degree of control over the colleges.[7] As well, when the structure is imposed, Thompson notes that one party, or at least a sub-group within a party, tends to be dissatisfied with the imposition.[8] There was just such a tendency in the 1960's and 1970's to favour large, heterogeneous bargaining units and centralized bargaining in Canadian public sector bargaining. It appeared to stem from: a fear of whipsawing, although there is a lack of empirical evidence to support this assumption; the uniformity of terms and conditions of employment of civil servants; and, the tendency for civil service associations to be large, all encompassing organizations which lent themselves to centralized bargaining structures.

A critical feature in Thompson's study is his comparison between centralized and decentralized collective bargaining structures in public sector multi-employer organizations. Thompson notes that the advantages and disadvantages associated with either structure are essentially the obverse of each other. Figure 9.2 summarizes Thompson's findings.

In concluding that there is no support which would lead to a preference for one structure over the other, Thompson states that

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[7] Mark Thompson, "The Role of the Employer in Public Sector Bargaining Structures: Theoretical Considerations", 1987, p. 3.

[8] Ibid.

FIGURE 9.2

THE ADVANTAGES AND DISADVANTAGES ASSOCIATED WITH CENTRALIZED AND DECENTRALIZED BARGAINING STRUCTURES

	Centralized Structure	Decentralized Structure
ADVANTAGES	- economies of scale - professionalization of negotiations - coordination of collective bargaining with product labour markets - uniform treatment of employees - reduction in the number of disputes due to broad societal views of labour conflict - ability to withstand whipsawing	- effective representation of small group interests - opportunity for individuals to affect others - limited impact of disputes on the public - limited use of third parties - limited risk of resistance from lower echelons of labour and management to agreements - less likelihood of negotiations being politicized - less frequent government intervention - negotiations results more reflective of relevant economic conditions of the parties
DISADVANTAGES	- failure to attend to local issues - loss of member participation in bargaining - inappropriate (for some members) terms and conditions of employment - lengthy rounds of negotiations - internal political pressures in negotiations - inflexibility in coping with a changing environment - confrontation causing injury to the community and provocation of third-party intervention	- lack of economy of scale - less professional negotiations - lack of uniformity in terms and conditions of employment, including wages - opportunity for increased numbers of disputes - whipsawing - personalities might play a more dominant role in negotiations

Source: This figure was compiled from Mark Thompson's report: "The Role of the Employer in Public Sector Bargaining Structures: Theoretical Considerations", August 1987.

the critical considerations in determining bargaining structure are:

- congruence must exist between the bargaining structure and the environmental and structural conditions of the bargaining parties' relationship;
- there is at least tacit support of the structure on the part of the parties.

Thompson also finds that, while the bargaining parties may not be cognizant of the most appropriate bargaining structure given their circumstances, they nonetheless tend to resist structural change even if their preference for the current structure is irrational.

John Dennison, in his study entitled "Collective Bargaining in Canada's Community Colleges: An Analysis" reviews the relationship between locus of bargaining and the bargaining agent for colleges. He discusses five features of the institutions which impact the locus, the agent, and the overall relationships between unions and administrations:[9]

- the extremely varied and comprehensive nature of the curriculum, which call for many different types of teachers and instructors;
- the varied working conditions of staff in order to suit the requirements of the large number of different programs;
- an emphasis on teaching and learning which call for peer evaluation and collegiality in the development of curriculum and pedagogy;
- the need for the colleges to be extremely responsive to change and therefore flexible in their utilization of human resources;
- the need to be totally accessible to the community, which means that programs must be offered when the

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[9] John Dennison, "Collective Bargaining in Canada's Community Colleges: An Analysis", 1987, pp. 11-21.

> students want them, rather than at the convenience of the academic staff.

Dennison notes that many of these characteristics pose problems for employee relations because collective agreements tend to impose rigidities, separate the functions of bargaining unit and non-bargaining unit employees, homogenize terms and conditions of employment, and force policies which serve the desires of employees, rather than the needs of the community.

Regarding the advantages and disadvantages of centralized and decentralized collective bargaining structures identified by Thompson, Dennison states:[10]

> *"The concept of board-faculty association bargaining does raise additional questions. As noted earlier, the board acts as an agent for the real paymaster - the provincial government. In some situations boards have relative freedom; in others constraints placed upon the bargaining process by the government make the exercise merely a ritual.*
>
> *"There is some argument that local bargaining inevitably leads to "leapfrogging" over salaries and working conditions. This study found very little evidence of this phenomenon. It is true that a wide range of top salary scales exist in provinces which practise local bargaining. However, it appears that "trade-offs" in the bargaining process (i.e. acceptance of lower salaries for lighter teaching loads) do occur, a phenomenon which, in part, accounts for the differences. The opportunity for colleges to make this choice is regarded as worth preserving.*
>
> *"There are no doubt many advantages from centralized bargaining, particularly where governments view all colleges as parts of a "system". Conversely, a strong provincial union, well funded and aggressively led, gives the colleges considerable "clout" with government while competing against other organizations for the public tax dollar. Particularly in a time of fiscal restraint governments are susceptible to pressure from*

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[10] Ibid, p. 87-88.

> *powerful unions which have the resources to enlist public support.*
>
> *"It is worth noting, at this point, that there are many forms of centralized bargaining which occur in Canada's colleges. In some provinces, college instructor organizations exist as locals (sometimes with other bodies) of very large public sector unions. While it is conceded that the potential for the exercise of "province-level" power is always possible in these circumstances, there is often very little effort made by authorities in large public sector unions to consider, or attempt to consider, the specific or unusual circumstances in which college instructors perform.*
>
> *"Conversely, a provincial union specific to college instructors may well be able to sensitize government personnel directly and deliberately to the unique features of college teaching which deserve to be recognized in contract negotiations."*

Dennison also elaborates on Thompson's assertion that environmental and basic structural factors appear to have shaped the locus of bargaining:[11]

> *"As described in this report, in several provinces colleges bargain with their respective boards of governors on an individual institutional basis. In one province, British Columbia, all but one college instructors' union operates under the provincial labour code, whereas in Alberta, separate college instructor locals bargain under provincial legislation specific to each of the various tertiary educational institutions. In either province, the collective agreements are individualized to the extent that each includes items and clauses peculiar to the institution. There are many who would argue that this phenomenon is consistent with the notion of a college, serving its own unique region in its own unique way. Matters of access and program delivery in [rural] colleges, for example, must necessarily be somewhat different from the situation prevailing in major cities.*

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[11] Ibid., p. 86.

Two other external researchers also address the issue of locus of bargaining. Joseph Rose in his study of "Dispute Resolution Mechanisms in Ontario's Community Colleges" states:[12]

> *"Unless there is a compelling public interest rationale for statutorily determining bargaining structure, my preference would be to allow bargaining structure to find its own level. While I sense there is general support for the current system of province-wide bargaining, this may not always be the case. Consequently, a mechanism should be found to permit modifications to the existing structure (e.g. a system of two-tier bargaining) where there is substantial support from both the management and staff side."*

Rose notes, as does Thompson, that an essential requirement in determining the locus of bargaining is the parties' approval of whatever recommendation may be made.

Graeme McKechnie, in his report on the Colleges Collective Bargaining Act, also addresses locus of bargaining:[13]

> *"Currently, [the CCBA] provides for Provincial bargaining. The logic of this model can be found in the financing of the Community Colleges which, although each College collects fees, the bulk of the College financing is done through Provincial grants. Unlike Boards of Education which can levy taxes in local areas, community Colleges have no other source of income, short of fee income and Provincial grants. This is not unlike the hospitals in which Provincial grants for operating expenses and capital expenditures are made.*
>
> *"A purely Provincial model in the Community College sector has two distinct advantages and two distinct disadvantages. As advantages, one can indicate that Province-wide bargaining provides for a common set of conditions and salaries and therefore cost estimates for the twenty-two Colleges taken as a whole. This allows some control at the centre, i.e. the Provincial*

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[12] Joseph B. Rose, "Dispute Resolution Mechanisms in Ontario's Community Colleges", 1987, p. 66.

[13] Graeme McKechnie, "Report to the Colleges Collective Bargaining Commission", 1987, pp. 32-34.

government, and provides for predictability in this area of the operation. A second advantage is that from the standpoint of the Union, a majority of all College personnel, whether it be in the support staff or the academic staff, are required to operate [in] a work stoppage and individual dissenting colleges will be merged with the supporters or that local dissidents will not remain at work. With Province-wide bargaining, especially in view of the deemed strike clause, individual Colleges cannot be the subject of rotating strikes, therefore putting pressure on the management's side.

"With respect to disadvantages, the Province-wide bargaining scheme does not necessarily take into account the unique or at least special nature of local College conditions. On matters such as salaries or fringe benefits, this may not present a problem; however, on matters such as local working conditions, a standardized, Province-wide formula such as the workload formula may cause some difficulty at the local level. Province-wide negotiations therefore could fail to address certain local issues and these local issues may remain unsolved, yet festering for some period of time. In addition, a work stoppage or at least disagreements which affected the efficient operation of the Colleges as a whole, could result from purely local problems, but have the impact on the Provincial scene.

"On balance, the Province-wide model must be said to have worked reasonably well if one takes as a measuring point the number of work stoppages over the years since the inception of Bill 108 in 1975. However, that surely is not the only measure. Public statements and statements made during negotiations to third parties, reveal that at least on the management side there is great concern with the Province-wide negotiations [in regard to workload disputes] and as already indicated, at least one Fact Finder has raised a concern about the Provincial structure of collective bargaining in the Community College model.

"Should the model change is the real question and it would appear that the answer must be found in the efficiency of negotiations and the way in which the parties bring the items to the negotiating table. There is little question that the frustration felt by the management side with respect to local working conditions being accommodated by a Province-wide workload formula has some merit. Although it may be true that individual Colleges do not have the "appropriate" individuals at the bargaining table, nonetheless, there is some truth to the matter that many of the issues that reach the bargaining table are

> *quite local in nature and it is difficult to accommodate them under a purely provincial framework, short of a series of addenda to a collective agreement."*

McKechnie is of the opinion, as is Rose, that the system-wide locus of bargaining cannot be criticized on the basis of work stoppages. He also points out that the advantages of a centralized structure are sufficiently significant as to outweigh any disadvantages which could result from a change in venue of collective bargaining in the colleges.[14]

The focus on the overall structure of the colleges as a determinant of the collective bargaining structure is important. A constant question in the college community is whether the Ontario colleges are ´a system of colleges´ or ´a college system´. The term ´system of colleges´ is used to describe autonomous, locally controlled and managed institutions, highly responsive to local needs, which develop programs and initiatives designed to respond to local conditions and environments, and are relatively free of policy direction and control from the provincial government. In such a system, local boards of governors have executive responsibilities including hiring and firing, budgeting, and making trade-offs between salaries, working conditions, and capital expenditures. The colleges in Alberta have been called a true ´system of colleges.´

The term ´college system´ is used to describe colleges which, while being community-based and serving the needs of local communities, do so under considerable direction and control from the provincial government. In a ´college system´ the colleges march to provincial priorities, are funded centrally, and experience considerable provincial control over how funds are allocated and spent, what programs will be funded, what terms and conditions of employment shall prevail, and so on. The clearest example of a ´college system´ exists in New Brunswick, where the nine colleges are directly administered and controlled from Fredericton.

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[14] Ibid, p. 41.

A true ´system of colleges´ would be best served by a decentralized collective bargaining system, since that is essential to full local autonomy. Such a system would allow the colleges to develop their unique characteristics, and make the essential trade-offs between programs offered, salaries, benefits, and working conditions. In such a system, centres of excellence would emerge, while some colleges would not be successful in attaining high levels of educational quality.

On the other hand, a ´college system´ would be best served by highly centralized bargaining, since that is essential to province-wide planning and control. In centralized bargaining the province can set priorities, direct expenditures, and prevent competition on salaries, benefits and working conditions between colleges.

9.4 ALTERNATIVES TO LOCAL OR PROVINCIAL BARGAINING

Many outside observers of collective bargaining in the colleges have suggested some measure of local or two-tiered bargaining,[15] and there are even some proponents of local or two-tiered bargaining among the college presidents themselves. Alternatives to either local or provincial locus of bargaining include:

- Two-tier bargaining in which some issues, such as salaries and benefits, would be designated by statute as provincial issues while others, such as workload, would be designated as local issues.

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[15] Walter Pitman favoured local bargaining whereas Skolnik proposed a two-tiered system with local bargaining over workload-related issues.

- Two-staged bargaining in which all or some designated issues would initially be negotiated locally. Failure to agree locally would escalate the issue to the provincial bargaining table.
- Local variation bargaining in which all issues would be negotiated provincially but the parties could negotiate local agreements that either varied or supplemented the provincial agreement. This option might cover all issues, or be restricted to selected issues.

Two-tier bargaining is based on the premise that some issues, such as workload and job assignments, are best negotiated at the local level, whereas others, such as salaries and benefits, are best negotiated provincially. It is an attempt to get flexible, tailor-made agreements without either the excessive fragmentation of bargaining or associated whipsawing over salaries and benefits. At the same time, two-tier bargaining encourages local responsibility and accountability for at least some aspects of the administration of the collective agreement.

Many of the preferred outcomes of local bargaining, including enhanced communications, accountability, and ownership of solutions, can be achieved through two-tier bargaining. Given that salaries and benefits are not included at the local negotiations, the probability of a local strike would be less than for totally local negotiations, but somewhat greater than for provincial negotiations. The possibility would remain, however, of a system-wide strike or lock-out over the provincial issues. Local negotiating expertise would be required and some whipsawing could occur over the negotiable terms and conditions of employment. There would also be the potential inefficiency, and expense, of multiple negotiations.

With two-stage bargaining, issues would be discussed first at the local level and only unresolved issues would be escalated to the provincial level. The right to strike or lock-out over unresolved issues may, or may not, be available at the local level. The problem with this form of bargaining is that the plethora of local issues which might arise could make the provincial negotiations much more complex and difficult to resolve. It could also increase the probability of a provincial strike over essentially local issues.

In local-variation bargaining, negotiations would be conducted at the provincial level and, by mutual consent of the parties, the resulting provincial agreement could be varied or supplemented with local agreements. There are many potential variants on this form of bargaining. The issues on which there could be variance may be carefully delineated or left unstated; local agreements may be allowed to take precedence over the provincial agreement or may be required to give way to it; such local agreements could be within the purview of local agents (an individual college and union local) or may require the acquiescence of the central bargaining agents. Inherent in the concept of local variation bargaining, however, is the notion that it requires the mutual consent of both local parties and the provincial agreement would prevail in the absence of such mutual consent.

Local-variation bargaining is attractive in many ways: it encourages local problem solving while not forcing local agreements and risking strikes or lock-outs over local issues; and it encourages communication and innovative responses to local conditions. However, it may also produce a patchwork quilt of local agreements which could obscure the terms and conditions enshrined in the provincial agreement. If local agreements were allowed to vary the the provincial agreement, they would undermine the provincial collective bargaining process and very clearly affect the overall balance of power in collective bargaining. Tensions would be fueled between the central bargaining agents and their respective local organizations, thereby complicating the processes of demand setting, negotiations, and contract administration.

9.5 RECOMMENDATIONS

The research on locus of bargaining suggests that there is no obvious, ´one best way´, to design a bargaining structure. The choice of the appropriate locus of bargaining was guided by the following objectives:

- the individual colleges and the college system as a whole should understand and develop commitment to the collective agreements which are negotiated;
- there should be a closer integration of contract negotiation and administration;
- negotiations and the resulting collective agreements should focus on both provincial and local issues and problems;
- collective bargaining should be conducted competently and cost-effectively;
- the parties to the collective agreements should have a balance of bargaining power so that neither party is forced into continued acquiescence.

The following are the specific recommendations to achieve these objectives:

Recommendation #2*

Collective bargaining should continue to take place at the provincial level, although local bargaining should be strongly encouraged within this provincial framework.

Recommendation 3*

Local bargaining should be encouraged by:

(a) Adding an amendment to the CCBA which includes a preamble legitimizing and encouraging local bargaining. This preamble should include the phrase:

> *...and whereas it is in the public interest to encourage local bargaining over issues of concern to a particular college of applied arts and technology and a local employee organization...*

(b) Amending the duty of fair representation in S.76 of the CCBA as follows:

> *An employee organization shall not act in a manner that is arbitrary, discriminatory, or in bad faith in the representation of any of the employees, whether members of the employee organization or not, and shall pay due regard to local issues when bargaining on their behalf.*
>
> *The employer bargaining agency shall not act in a manner that is arbitrary, discriminatory, or in bad faith in the representation of any of the colleges of applied arts and technology and shall pay due regard to local issues when bargaining on their behalf.*

(c) Adding a new section to the CCBA entitled ´Local Bargaining´ as follows:

> *Notwithstanding anything in this Act, the parties, through their local representatives, may enter into local agreements applicable only to a particular college of applied arts and technology.*

9.6 BASIS OF RECOMMENDATIONS

Both local and provincial bargaining - and all of their variants - have some desirable and some undesirable consequences. Local bargaining would give the greatest sense of ´ownership´ of an agreement, would force the parties to confront and deal with their local issues, and would encourage differentiation within the college system. It may also lead to whipsawing and leapfrogging over salaries and benefits, and would probably result in an increased strike and/or lock-out frequency.

It is interesting to observe a situation in which the actual parties to collective bargaining (OPSEU, the Council of Regents and the colleges) do not want local or two-tiered bargaining, while the vast majority of experts from outside the system, including both Skolnik and Pitman in their reports, believe that it is the best thing that could happen to the system, at least in the long-term.

It is, of course, relatively easy for outside 'experts' to suggest that some short-term pain in adjusting to local bargaining is worth the long-term gain of more effective local bargaining relationships. The question that must be answered is whether the potential benefits would be sufficient to warrant the short-term adjustment costs of mandating local bargaining in the face of concerted opposition from both OPSEU and a substantial majority of the colleges.

While the current system of local bargaining **within** the collective agreement appears to be working to the satisfaction of the parties, it is very fragile. Therefore, if the conclusion is that some form of local bargaining is desirable as a matter of public policy, it must be protected through the CCBA.

9.6.1 Educational Strategy and Bargaining Structure

If the task would have been to design a collective bargaining system from scratch, the starting point would have been the educational mission and organizational strategy of the colleges.

Ontario's system seems to be a hybrid, with characteristics of both the 'college system' and the 'system of colleges.' The colleges have a strong community orientation, some local autonomy in designing programs, and have local boards of governors who have the responsibility of recruiting and selecting the president. This local orientation and degree of local management was increased following implementation of the Pitman report.[16]

But the individual colleges do not have true fiscal and planning responsibilities. Planning, funding, and policy and program control is exercised by the Ministry of Colleges and Universities[17]. The colleges remain accountable to the Ministry. They are not permitted to compete in terms of differential salary and benefits levels and, indeed, where multiple colleges serve a metropolitan community, in Toronto for example, there is control over program offerings to prevent duplication and overlap.

In short, the current structure demonstrates considerable centralized planning and control but with decentralized operating autonomy. While there are eloquent advocates of greater local autonomy and differentiation between the colleges, which would argue for a regime of local collective bargaining, there is no sign that this is now, or is likely to be, government policy. Indeed, Ontario's colleges of applied arts and technology bear little resemblance to the community college found in some Western provinces or parts of the United States and they are a long-way removed from the independent, polytechnical institutions found in Europe.

This hybrid system suggests that collective bargaining should also be some mixture of centralization and decentralization. The centralized portion should be that which is related to fiscal and program planning and control; the decentralized portion should be that which impacts local operational autonomy and flexibility. In this way, structure can be made congruent with strategy.

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[16] Regulation 640, as amended by Regulation 196/87.

[17] The Colleges are responsible for initiating new programs and courses but they must be approved and funded by the Ministry of Colleges and Universities.

The recommendations made by this Commission are based on the fundamental assumption that the hybrid model, as described, accurately represents the current college system and its likely developmental direction. The collective bargaining system that is recommended in this report will be appropriate for either a centralized or hybrid system but **would be completely inappropriate for a decentralized 'system of colleges'**. Should the government decide to move in that direction, then a decentralized bargaining structure should be adopted in which each college negotiates its own collective agreement either by itself or in some voluntary association with other colleges.

9.6.2 Mandatory or Optional Local Bargaining

The recommendations propose that local bargaining should be on an **optional** basis, but that the statutory provisions do as much as possible to legitimize and encourage local negotiations. This is a recommendation based on pragmatism. If this Commission could ignore history, start with a completely clean slate, and design a new system from the ground up, then a two-tiered system would be recommended since this would be congruent with the organizational structure described above.

In the Commission's view, to recommend the two-tier option at this juncture in the evolution of college collective bargaining would be extremely disruptive. OPSEU would fight such changes tooth and nail. If legislative provisions were enacted over the objections of OPSEU, then the Union would do its best to coordinate and control local bargaining around provincial priorities - and it would probably be reasonably successful in doing so. In the result, a period of great instability would be introduced into collective bargaining for questionable gain. The 'winners' would be the lawyers, the paid negotiators, the industrial relations specialists that the colleges would have to hire, and the additional bureaucrats, mediators, fact finders, and arbitrators required to participate in a system requiring multiple sets of negotiations. It is possible that true local negotiations would result from mandated two-tier or two-stage bargaining. But, on judgement, the benefits of locally tailored agreements would not be worth the disruption to the system which would be required to achieve that outcome.

Furthermore, there is some reasonable optimism that the parties can continue to develop their own viable local bargaining system **within the framework of provincial bargaining**. The parties themselves have recognized the value of local agreements and there has been a steady evolution of such agreements within the colleges. What is needed is further encouragement of local bargaining and, as far as is possible, protection of local bargaining from being used as a pawn in provincial bargaining.

It is these imperatives and realities that underlie the proposed legislative amendments recommended in this chapter. To some extent the approach is based on the belief that legislation can be used both to confer rights and obligations, and to **encourage** certain behaviours and actions. A preamble to legislation - which, by the way, is completely absent from the CCBA - is the way in which parties are directed to approach collective bargaining in certain ways. The preamble to the Canada Labour Code[18] has often been cited as a particularly useful guide to the Canada Labour Relations Board, arbitrators, adjudicators, and conciliators in making various recommendations and determinations.[19]

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[18] Canada Labour Code, R.S.C. 1970, c. L-1.

[19] Canada Labour Relations Board, Public Service Alliance of Canada and City of Yellowknife, (1977) 2SCR.

This Commission has recommended that a preamble enshrine the value of local bargaining. It has also recommended that specific parts of the CCBA require each party to represent its constituents, and to negotiate local issues in good faith. Nothing in these recommendations **forces** local bargaining or detracts from the legal concept of a sole bargaining agent. However, taken collectively, they exert strong pressure on the parties to the provincial agreement to make reasonable efforts to deal with local issues. If one of the parties blatantly attempts to boycott local agreements as a bargaining tactic, it would lay itself open to a charge of lack of good faith in bargaining. Moreover, arbitrators would be highly unlikely to eliminate local agreement enabling language in collective agreements given the strong statutory encouragement of local bargaining contained in the preamble.

There is no doubt that these recommendations will make life more difficult, in a political sense, for the official bargaining agents. Individual colleges and union locals will be encouraged to press their provincial bargaining agents to negotiate local issues. Others may seek to negotiate local agreements which their provincial agents feel are not in the best interest of the group as a whole. Because the recommended legislation is, at most, permissive and encouraging, the provincial bargaining agents have the last say. The politics of saying ´no´ are always difficult, but they must sometimes be exercised. It is also possible that these recommendations will make the internal demand-setting processes of both parties more difficult and may also, to some extent, complicate provincial agreements. However, these are reasonable trade-offs for the increased emphasis on local negotiations.

In summary, the recommendations in this chapter are congruent with the educational strategy of the college system, at least as this Commission perceives this unwritten strategy to be, and take a pragmatic approach to the encouragement and protection of local bargaining. Such local bargaining should evolve, without the need to plunge the system into many years of instability if it is given statutory protection and encouragement.

10

THE PARTIES TO THE NEGOTIATIONS

The Ontario government provides 70 percent of the funding of the Colleges of Applied Arts and Technology and regulates the fees charged to students. Over 80 percent of the operating budgets of the colleges are expended on salaries and benefits and many negotiable items such as workload limits have a direct impact on the costs of the programs. Therefore, the government is a major actor in collective bargaining in the colleges whether it wishes to be so or not. The issue is whether this means that the government itself should actually be involved in negotiations as a party or whether it should adopt some other role.

10.1 CURRENT STATUS

At the present time, the statutorily designated bargaining agent for the colleges is the Council of Regents (COR), and the Ontario Public Service Employees Union (OPSEU) is the bargaining agent for organized employees.[1] Some consultation takes place on salaries and working conditions for non-unionized employees between a sub-committee of the Council of Regents (the Standing Committee On Terms and Conditions of Employment for Administrative Staff) and the Provincial Administrative Staff Association (PASA), a voluntary association of managerial, supervisory and other non-unionized employees of the colleges.

Although the Council is the official bargaining agent for the colleges, the actual organization for negotiations is under the aegis of the Staff Relations/Benefits Unit (SR/BU) in the

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[1] Provisions exist in s.72.1 of the CCBA for decertification of the employee organization and no recommendation for changing this is made in this report.

College Affairs Branch of the Ministry of Colleges and Universities. It serves as the secretariat of the Council of Regents for collective bargaining purposes and has responsibility for: the research necessary for negotiations; managing union-management relations, coordinating all committees; providing leadership to the colleges including advice and proactive direction; administering arbitration activity, other than that for local workload issues; and disseminating policy directives from the Council. In general, it is charged with the functions of a typical corporate employee relations department.[2]

The Council of Regents has established a series of interlinked committees to conduct negotiations. In the most recent set of negotiations the Council has attempted to increase the involvement of college administrators on the negotiating teams (Figures 10.1 and 10.2) and senior college administrators serve as spokespeople for the Council´s negotiating team.

OPSEU has always assumed that the Council is really just a ´puppet´ in collective bargaining and that the government actually ´pulls the strings´. This perception has been reinforced in a number of ways. First, the conduct of negotiations is under the administrative control of the Staff Relations/Benefits Unit of the College Affairs Branch of the Ministry of Colleges and Universities. This is a clear signal that the government is running negotiations. Second, in the 1987 round of negotiations the Assistant Deputy Minister of Colleges sat on the negotiations steering committee... another clear signal of government involvement. Finally, there was direct ministerial involvement during the 1984 strike and, before that, various ministers have intervened in bargaining. In summary, the

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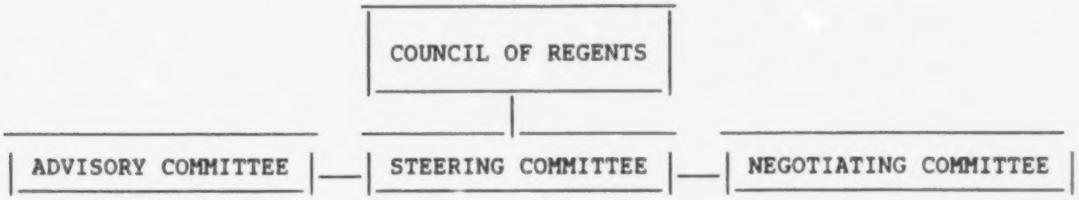
[2] A more detailed outline of the SR/BU activities is provided in Chapter 11 - "Provincial Organization for Collective Bargaining".

FIGURE 10.1

MANAGEMENT COLLECTIVE BARGAINING MODEL - SUPPORT STAFF



ADVISORY COMMITTEE

CHAIR: COP Chairman
Designate

MEMBERS:

- Presidents (Sufficient to cover each region)
- ACAATO President

  ACAATO Vice-President
- EERC Chair (x2)
- COR Representative

STEERING COMMITTEE

CHAIR: COR Chairman

MEMBERS:

- Chair Advisory Committee
- Chair Negotiating Committee
- Vice-Chair Negotiating Committee
- ADM
- COR Representative (x2) (COR Member, Manager, Staff Relations)
- Legal Counsel

NEGOTIATING COMMITTEE

CHAIR: President

VICE-CHAIR:
President/
Vice-President

MEMBERS:

- Senior Finance/ Admin Officers (x2)
- Directors (x2)
- Senior Personnel Officers (x2)
- Managers (x2)
- COR Rep. (Manager Staff Relations)

ADVISOR:

- Legal Counsel

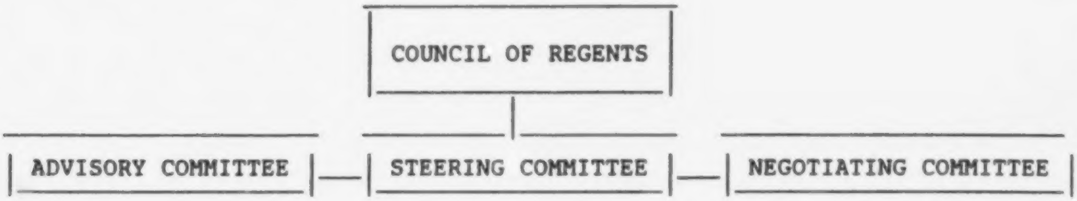
RESOURCE FUNCTIONS

. Legal
. Communications
. Data Collection
. Research
. Logistics

Source: This information was obtained from the Staff Relations/Benefits Unit in the College Affairs Branch of the Ministry of Colleges and Universities.

FIGURE 10.2

MANAGEMENT COLLECTIVE BARGAINING MODEL - ACADEMIC STAFF



ADVISORY COMMITTEE

CHAIR: COP Chairman
Designate

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- EERC Chair (x2)
- COR Representative

STEERING COMMITTEE

CHAIR: COR Chairman

MEMBERS:

- Chair Advisory Committee
- Chair Negotiating Committee
- Vice-Chair Negotiating Committee
- ADM
- COR Representative (x2) (COR Member, Manager, Staff Relations
- Legal Counsel

NEGOTIATING COMMITTEE

CHAIR: President

VICE-CHAIR:
President/
Vice-President

MEMBERS:

- Senior Academic Officer (x2)
- Senior Finance/ Admin Officer
- Dean
- Senior Personnel Officer
- Chairman (x2)
- COR Rep. (Manager Staff Relations

ADVISOR:

- Legal Counsel

RESOURCE FUNCTIONS

. Legal
. Communications
. Data Collection
. Research
. Logistics

Source: This information was obtained from the Staff Relations/Benefits Unit in the College Affairs Branch of the Ministry of Colleges and Universities.

government has clearly been the ´ghost´ at the bargaining table and deeply involved in the collective bargaining process.

Much of the blame for protracted bargaining and the various accusations of delay, failure to bargain in good faith, and unrealistic final offers stems from the perception - whether real or imagined - that the actual employer is not at the table. When the Council of Regents says "No!" the Union wonders what this really means. Is it a final "No!", a "No ... until we check with the Ministry" or what?

This situation is not helped by the large turnover in the composition of negotiating teams and steering committees which means that the parties never really get to know each other well. And, of course, any change in government creates a sense of a whole new ballgame.

In January 1987 the role of the Council of Regents was altered quite dramatically from executive to advisory[3]. Its new mandate reflects a long-term advisory and planning role, the success of which depends on the establishment of constructive dialogue with all the stakeholders in the colleges. This clearly implies that the Council must establish a non-adversarial, non-confrontative relationship with both employees and employee representatives.

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[3] A January 14, 1987 Press Release from Colleges and Universities Minister Gregory Sorbara outlined the new Council of Regents´ duties as follows:

> "The Council of Regents, in its redefined role, will:
>
> - Identify, assess and advise the minister on policy issues affecting the college system;
> - Monitor developments in institutions in other jurisdictions to determine their relevance to the Ontario college system;
> - Advise the Minister on long-term, strategic planning for the college."

10.2 DISCUSSION

10.2.1 The Positions of the Parties

Briefs from the Council of Regents, the Association of Colleges of Applied Arts and Technology of Ontario (ACAATO), and the Committee of Presidents (of colleges), all proposed that the Council of Regents should remain the bargaining agent for the colleges. The Committee of Presidents, however, wished to control the bargaining process.

OPSEU initially took no position on a designated bargaining agent for the colleges, although subsequent consultations clearly established that whatever, or whoever, the designated bargaining agent was, it should have the authority to establish a realistic bargaining mandate and arrive at a negotiated settlement. It was clear that OPSEU favoured direct, face-to-face negotiations with the Ministry of Colleges and Universities as the bargaining agent for the colleges.

Both parties′ desire to have a direct link with the Ministry stems primarily from their perception of who controls the purse strings. This perception has been reinforced by past experience. Quite typically, the colleges′ representative at the bargaining table has lacked the authority to negotiate a realistic settlement. This was true whether it was SR/BU personnel, a negotiating team formed by members of college administrations, governors of colleges, the legal representatives of the Council of Regents, or the chair of the Council him or herself. In past negotiations the Minister would often intervene directly, or be at the end of a telephone line between the negotiations and his or her office. Even in the most recent round of negotiations, the Assistant Deputy Minister of Colleges and Universities responsible for the colleges, who is on the negotiations steering committees, is presumed by the union bargaining team to be in direct contact with the Minister.

It was also clear from the Commission's consultations that there was a basic unwillingness by **some** colleges and union locals to grasp full responsibility for collective bargaining. It has been possible in the past to find convenient scapegoats for the state of employee relations in the colleges since difficulties could always be blamed on the Council of Regents, the Staff Relations/Benefits Unit of the Ministry, or even the legal firm retained by the Council of Regents.

10.2.2 Problems with the Current Status

The consequences of this bargaining structure and the direct intervention by MCU have been:

- a sense of lack of ownership of the collective agreement by the colleges, either collectively or individually. This was worse when the colleges were not as directly involved in negotiations as they have been most recently, but it is still there. Put simply, some colleges never felt that they were bound by the agreement because it was negotiated by someone else;
- protracted negotiations in which important issues, with significant cost implications, were seldom addressed until the very last minute. Lacking a firm mandate, the negotiators went through the preliminaries but everyone waited to see what the Ministry wanted to do and what resources it was going to provide for a settlement;
- a very real sense of frustration on the part of negotiators, particularly those for the union, who felt that they were not talking with people who could make real decisions about matters of substance;
- some frustration on the part of some college administrators and human resource professionals that they were unable to develop influence on the collective bargaining process because of limited involvement in the development of bargaining demands and a negotiating mandate;

- multiple interpretations of the collective agreement, leading to frustration by both administrators and union officials. Such multiple interpretations at the local level have also led to varied interpretations by arbitrators and, therefore, the emergence of a complex and contradictory jurisprudence.

10.2.3 Options

There are three approaches which the government could conceivably adopt in negotiating with employee organizations in the colleges. These are described briefly, below, as the **direct**, **intermediary**, **and mandated models**.

> The **direct** model would involve negotiations on terms and conditions of employment between the Ministry of Colleges and Universities and the union. This is the most direct, least ambiguous of the three models.
>
> The **intermediary** model, in which an organization such as the Council of Regents or some other designated body, would advise the Ministry what is required to reach a settlement, would negotiate with the union, continue to keep the Ministry informed of what is taking place and what is required for a settlement, and act as the intermediary between the Ministry and the unions. This is the current model.
>
> The **mandated** model, in which the Ministry would seek the colleges' estimate of what is needed to reach a settlement and then give a mandate to the colleges to negotiate within certain financial and other parameters. This mandated model would involve either: (a) **block** funds which the colleges would decide how to allocate including the apportionment between salaries and benefits, the addition of new programs, and so on, or; (b) **envelopes** which the government would designate for purposes such as 'salaries and benefits increases for current programs', 'funds for new programs', 'fund-backs (to the government) for discontinued programs', and so on.

The **direct** option is undoubtedly the simplest and most straightforward arrangement. The union would be talking directly to the ministry responsible for the colleges and to the paymaster - the government. There would be no ambiguity about who had responsibility for concluding a deal.

One outcome of this structure would be for the individual colleges, and the colleges as a whole, to be dissociated from collective bargaining. This arrangement has both advantages and disadvantages. On the plus side, it would focus the conflict on the government, leaving the individual colleges to build a collegial relationship within the framework of whatever collective agreement the designated bargaining agents worked out. Also, the government would be forced to fund the colleges in accordance with the agreement, thereby relieving some colleges of the budgetary pressures resulting from negotiations.

On the minus side, there would be little or no 'ownership' of the collective agreement by the colleges. It would be a deal worked out by others and, while a legal document, it would have little moral force as an agreement to be honoured both in its letter and in its spirit. This would inevitably lead to problems in contract administration and increased litigiousness of the kind that is evident in the relationship between the government and unions in the civil service. The colleges would experience decreased autonomy as they had less and less control over terms and conditions of employment. All previous attempts to increase accountability by the colleges would be set back.

There are two other important considerations. First, the standard in the Ontario public service is that employees do not have the right to strike and the government cannot lock-out its employees. Compulsory arbitration is used if the parties cannot reach an agreement. While this Commission does not take a stance on that much broader issue, there is no good reason for removing the right to strike and lock-out from college employees and the colleges since education cannot be considered an essential service in the sense that its withdrawal is a threat to public safety or vital economic health. Therefore, direct, face-to-face negotiations between the government and unions representing college employees would create an anomalous situation in which the government was dealing with a bargaining unit with the right to strike. This, in turn, would force the government to reexamine the overall issue of the right to strike in the public service. Second, if a strike was to occur it would be a strike directly against the government, making it extremely difficult for the government to arrange the necessary accommodations to end such a strike. It would be much easier for the government to intervene between two parties when absolutely necessary, than it would be to back down from a negotiating position it had taken itself.

The current model of bargaining resembles the intermediary model described above. While it puts some distance between the government and the bargaining table, it is also the cause of considerable ambiguity, uncertainty, delay and sometimes outright confusion in the bargaining process.

Of the three alternatives, only the mandated model is consistent with some degree of government involvement and the development of some sense of ownership by the colleges of the resultant agreement. Either of the others are essentially deals worked out between the Ministry and the employee organizations.

Block funding would allow considerable room for the colleges to shape their own collective bargaining mandate. Given a certain level of funding and some broad policy direction, the colleges could decide how much of what kinds of ´products´ would be offered, how much money should be devoted to salaries and benefits, to reducing class sizes (by limiting enrollments or adding staff), to discontinuing small classes, and so on.

The envelope approach to funding would allow greater Ministry control over how money is spent. For example, the Ministry could allocate money for ´salaries and benefits for existing programs´, or ´funds for the addition of new faculty´, or ´funds for Northern programs´, or any other policy initiative. The more specific these envelopes were, the less room for free collective bargaining there would be. At the extremes the envelopes would become a ´take it or leave it´ management offer.

It is also obvious that if the envelopes are too tightly specified and defined, collective bargaining within the colleges would become a meaningless activity.[4] By definition, bargaining implies room to maneuver and make certain trade-offs and this requires either block funding or at least rather large and non-specific envelopes!

If the funding in either the blocks or the envelopes is seriously inadequate, to the point where the bargaining agents were unable to defend their positions as being within the realm of reasonableness, then the possibility exists for the colleges to ´side´ with the union to mount a concerted attack on government funding.

If, under such circumstances, the Ministry subsequently were to relent and provide extra funding, the government would then undermine the bargaining agent and establish the intermediary model as the de facto bargaining system. The union would learn that the bargaining agent is a mere front for government and that progress could not be made on the tough, costly issues, until the government could be forced to the table in one form or another.

10.2.4 A Bargaining Agent for the Colleges

Unless the government decides on the **direct** approach to negotiations, there must be a formally designated bargaining agent for the colleges since the maintenance of provincial bargaining is recommended. There have been several suggestions, from the parties as well as external sources, as to who this body should be. These suggestions include the Council of Regents, the

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[4] In effect, such bargaining would be tantamount to educational Boulwarism.

Association of Colleges of Applied Arts and Technology (ACAATO), some sub-committee of ACAATO, the Committee of Presidents of the colleges (currently a committee of ACAATO but a highly independent one), or a separate body constituted outside the ACAATO structure.

The Council of Regents has never actually had real legitimacy as the bargaining agent for the colleges even though it is the statutorily designated bargaining agent. The historical analysis suggests that it either usurped this role, or merely stepped into a vacuum that existed when confusion arose over whether collective bargaining in the colleges would take place under the Public Service Act[5], rather than the Labour Relations Act[6], as originally intended and expected.

In one report after another, arbitrators and fact finders have identified this problem of separation of the bargaining agent (the Council of Regents) and the employer (the individual colleges) as contributing to the difficult negotiations, and the parties' inability to deal with issues between formal rounds of negotiations. While the Council of Regents has attempted, and succeeded, in involving more administrators in the collective bargaining process, this basic structural problem remains.

For these reasons, this Commission has had to consider assigning the Council of Regents' role in collective bargaining to another body. Such a body must have legitimacy, both in the eyes of the colleges and their administrators, as well as in the eyes of the employee representative. This legitimacy is required in order for the bargaining agent to engage in realistic mandate setting during the negotiations process, and to be adequately responsive to the needs and priorities of the colleges.

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[5] Public Service Act, 1961-62, c. 121.

[6] Labour Relations Act, R.S.O. 1960, c. 202.

The desire, expressed by ACAATO in its brief, to control the collective bargaining process reflects a wish, by some of the boards as well as some individual governors, to have a stronger voice in collective bargaining and to strengthen the governors' role in the overall management and direction of individual colleges and the college system as a whole.

The role of the board of governors should, however, be confined to the local colleges. It should consist, primarily, of selecting the presidents of the colleges and exercising general policy control, and should not involve operational management. It certainly should not involve direct involvement in collective bargaining. Governors should hold their presidents responsible for the conduct of collective bargaining, but should not be personally involved in it. There is nothing in the mandate of governors of a college to suggest that they should **collectively** try to manage or dictate the approach to collective bargaining taken by the colleges as a whole.[7]

Furthermore, involvement in collective bargaining has no real place in the mandate of ACAATO. ACAATO is not currently incorporated ... it is a voluntary organization devoted to discussion and communication, as indicated in its constitution.[8] Direct involvement in negotiations, with the exposure to conflict associated with negotiations, would reduce the effectiveness of ACAATO in the achievement of its stated purpose by sidetracking the organization.

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[7] Regulation 640 under the Ministry of Colleges and Universities Act outlines the role of the board of governors.

[8] "Constitution of the Association of Colleges of Applied Arts and Technology of Ontario" in: ACAATO Handbook. 1986/87.

This suggests that a non-governmental bargaining agent should be a new body, not affiliated with ACAATO. There are two basic options: an elected or appointed body representing the colleges; or, an employers' association in which all the colleges are represented.

Any elected body would be only representative of the colleges ... it would lack the direct involvement of each college therefore diluting the feeling of ownership of the resulting collective agreement. It is one stage removed from real involvement.

The employers' association option is based on the need for involvement. One of the studies for this Commission addressed the structure, processes, and outcomes of employers' associations. They can be of two basic types: voluntary or compulsory. Voluntary associations, as the name suggests, are composed of employers who collectively negotiate agreements which they voluntarily bind themselves to. There are several such associations in Ontario, most notably the Ontario Hospitals Association. Compulsory associations are established by statute. Examples are found in the construction industry and the six Metropolitan school boards which negotiate under the Municipality of Toronto Act.[9] In compulsory associations the employers must belong to the association and are bound by any resulting agreements.

The advantage of an employers' association for the colleges lies in the fact that it would involve each college in a direct way. Each college would be a member of the association, and the association would become the legal employer for purposes of bargaining. Each president would have a position on the governing council, which means that the collective agreements would be negotiated by the people who have to live with them. The collective agreements would be ratified by the colleges which, along with the involvement of the presidents, should produce a sense of ownership in the negotiating and contract administration process. Furthermore, under such an arrangement, ´union´, ´college´, or ´policy´ grievances with system-wide implications would be processed at the **system** level, and a more stable and consistent jurisprudence should emerge.

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[9] Municipality of Toronto Act, 1982, c. 314, s. 1(g).

There are some disadvantages associated with having an employers´ association as the bargaining agent. When such associations are large, as this one would be, it is difficult to maintain a high level of involvement and commitment by the parties. It would be easy for each to perceive themselves as insignificant, and a small cog in a very big wheel. Achieving consensus would also be difficult if each member had its own objectives and perceptions of what is, and what needs to be. Lastly, there would be no guarantee that each member would be on-side with each position taken by the association yet they would be bound by the decision and would have to take a statesmanlike approach to living with positions that they did not agree with.

10.3 RECOMMENDATIONS

In formulating the following recommendations, the Commission has forged a distinction between the government´s role as the paymaster and formulator of policy direction, from that of bargaining agent or negotiator. The key principles underlying the recommendations are that:

- the bargaining agent for the colleges should be the acknowledged and legitimate representative of the college administrations;
- the ´ownership´ of the collective agreement should be enhanced by putting the responsibility for its negotiations firmly on the colleges themselves;

- maximum participation in the negotiation and ratification of the collective agreements by the colleges should be encouraged so that everyone understands agreements in their letter and spirit;
- whomsoever appears at the bargaining table on behalf of the employer has the authority, and the mandate, to negotiate in good faith and reach a binding agreement.

Recommendation #4

The government should allow the designated bargaining agent for the colleges to develop a realistic bargaining mandate within the framework of fiscal, policy, and program control of the colleges.

Recommendation #5

The government should refrain from interfering in the bargaining process unless, and until, a state of jeopardy has been declared by the Colleges Relations Commission.

Recommendation #6

The funding mechanism used by the Ministry of Colleges and Universities and the estimates of program costs used by the Ministry of Skills Development should reflect reasonable estimates of costs and conditions of settlements to be negotiated by the bargaining agent.

Recommendation #7

The collective bargaining functions and responsibilities currently performed by the Staff Relations/ Benefits Unit of the Ministry of Colleges and Universities should be transferred to the bargaining agent.

Recommendation #8*

The bargaining agent for the colleges should be a compulsory employers' association, provisionally entitled the Colleges Employee Relations Association (CERA).- Each college, as a corporate entity, should be a member of CERA.

CERA should have a governing body consisting of the presidents of the colleges as the designated representatives of their colleges. This governing body should elect an executive committee of five presidents, representing a range of both size of college and geographical location. The executive committee should act as the negotiations steering committee.

Recommendation #9

No change should be made in the legislation covering the bargaining agent for employees, other than specific changes recommended in subsequent chapters of this report.

10.4 BASIS FOR RECOMMENDATIONS

10.4.1 The Mandated Model

The Commission recommends against the **direct** model, involving ministry-union negotiations, for three reasons. First, there would be no sense of ownership of the collective agreements by the colleges. Second, a highly anomalous situation would be created in which the government was bargaining directly with a unionized group with the right to strike and this would be destabilizing to the entire public sector bargaining system in the province. Third, in the event of a strike occurring it would be much more difficult for the government to act in settling it.

The **intermediary** model is the one which is currently in effect. It is the source of many of the current problems in the system and is not recommended. There is neither the authority of the direct presence of the government at the bargaining table nor the sense of ownership by the colleges from negotiating their own agreement.

Of the three possibilities, this leaves the **mandated** model as the approach that the Ministry should take. It is the one that will maximize a sense of ownership of the collective agreement by the colleges while nevertheless recognizing the role of government as the paymaster and policy maker.

Mandate Setting

The term ´mandate setting´ refers to the process whereby a negotiating team develops its positions, offers, and limits in negotiations. The mandate is developed in a preliminary and broad fashion at the outset of negotiations but usually changes through the process of negotiations as the parties begin to sort out each others´ priorities and more accurate estimates of probable acceptable outcomes emerge. Indeed, fixing too early on a final mandate can be dysfunctional to negotiations since it inhibits give and take in bargaining.

In the bargaining scheme recommended in this report, the employer bargaining agent has the responsibility for conducting the initial research (compensation and benefits surveys, potential union demands, identification of problem areas in the colleges, etc.) necessary to develop estimates of cost and non-monetary items and to determine what will be required to achieve a settlement. The results of this research would then be presented by the colleges´ bargaining agent to the College Affairs Branch of MCU as inputs to the Ministry´s funding process and policy making. There would be critical discussion of these estimates before funding decisions were made.

If this process is conducted reasonably, it should be possible to agree on funding levels and policy decisions with respect to issues such as program offerings and access that allow room for the colleges to negotiate and conclude collective agreements without the need to refer to the Ministry. If they are unrealistic, then, as collective bargaining proceeds, it may be necessary for the bargaining agent for the colleges to seek a revised mandate. The government may agree to increase funding or may hold fast. In the latter case, the bargaining agent's function will be to advise the Ministry of the probable outcomes of such a course of action and the Ministry will then have to decide whether it is prepared to incur the economic and political costs of settlement or the exercise of sanctions.

As envisioned, the mandate setting process clearly involves empowering the colleges' bargaining agent at the negotiating table. The bargaining agent, and not the government, will be the entity responsible for formulating the employer's mandate at the bargaining table and negotiating accordingly. Equally obviously, it cannot do this realistically without consultation with the Ministry which is the primary funder of the system and the driving force in educational and training policy in this sector.

The historical involvement of the Ministry of Colleges and Universities in the process of collective bargaining has created assumptions and expectations about its probable future role. It will not be an easy task to wean both the colleges and the union from the assumption that it is **really** the Ministry which controls negotiations. If there is to be a sense of ownership of the collective agreement, and if there is to be a sense that the employer's bargaining agent has the authority to negotiate substantively, this has to be changed.

Despite the temptation to become involved, particularly when there is a real threat of a strike, the Ministry must distance itself from the collective bargaining process. If the union tries an end-run on the designated bargaining agent and goes directly to the Minister, and the Minister tries to exercise any influence on the bargaining agent as a result of that pressure, the bargaining agent will be undermined and subsequent negotiations will be, de facto, between the government and the Union.

Within the ´mandated´ model, there are two ways in which this distancing can be done. The Ministry could announce to the colleges what their funding levels will be for a particular period and then leave it up to the colleges to negotiate within that absolute framework - the **block** funding approach. Alternatively the government could exercise greater control by establishing a realistic limit on the amount that the colleges could spend on employee salaries and benefits - the **envelope** funding approach. This second option would give greater control to the government since the colleges could not sacrifice programs to pay for salaries and benefits. However, collective bargaining would be much more meaningful under the block funding approach.

It is not up to this Commission to recommend which of these the government should choose ... that depends on the amount of control over policy and programs the government wishes to have. What is critical is that the amounts set be realistic. If they are not realistic, the Ministry will find itself being drawn into bargaining and there will be regression toward the **intermediary** model.

It has been suggested that the bargaining agent for the Colleges might, under this type of bargaining regime, simply ´pass the buck´ to the government and not make efforts to conclude an agreement. This should not happen if there is a competent collective bargaining professional involved in the process and if the presidents, who control the decisions taken by the bargaining agent for the colleges, are doing their job properly. If they are not, and wish to avoid responsibility for bargaining within realistic constraints imposed by the Ministry, then they should not be presidents!

The Bargaining Agent

The role of the Council of Regents as the bargaining agent for the colleges is inconsistent with its new, advisory role. Indeed, to continue as the bargaining agent, and thereby stand the risk of being embroiled in the conflicts associated with collective bargaining, would compromise the position of the Council and reduce its effectiveness. Furthermore, ´ownership´ of the agreement cannot occur if it is negotiated by a body whose constituency is the government, rather than the colleges themselves.

A designated body, such as ACAATO or some other appointed group, would not have the direct representation element which is inherent in the employer association structure that has been recommended. The employers´ association structure is the one approach which puts the responsibility for negotiations on the parties, where it belongs, and involves all of the colleges in decision-making and contract ratification.

Making the employers´ association compulsory, rather than voluntary, is necessary based on the recommendation (in Chapter 9) to stay with provincial bargaining as the dominant bargaining structure. A voluntary association would tend to factionalize and fragment over time, thereby undermining provincial bargaining. A 22-member association requires an effective executive committee to make the quick decisions required in collective bargaining. Further details of the organizational structure and mode of operation of this employers´ association is contained in Chapter 11 of this report.

The Employee Organization

OPSEU currently represents eligible employees in two bargaining units - support staff and academic staff. Adequate provisions exist within the CCBA[10] for decertification of the union should a majority of members of the bargaining units so decide. While subsequent chapters of this report make recommendations for changes in bargaining unit composition and ratification processes, the basic representation rights require no significant change.

Transfer of Functions to Bargaining Agent

The recommendation to transfer many of the existing functions of the Staff Relations/Benefit Unit of the Ministry to the bargaining agent for the colleges is consistent with the distancing of the Ministry from negotiations. This is discussed at greater length in Chapters 11, 12 and 13 of this report.

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[10] Colleges Collective Bargaining Act R.S.O. 1980 c. 74.

11

PROVINCIAL ORGANIZATION FOR COLLECTIVE BARGAINING

Both negotiations and contract administration are conducted at the provincial and local levels, and the activities at each of these levels affect outcomes at the other. Poor local contract administration results in many unresolved problems finding their way to the central bargaining table; a poorly constructed provincial agreement will cause multiple headaches for local administrators and union officers. Clearly, the organization for negotiations and administration at local and provincial levels must be integrated if there is to be an effective, system-wide process of collective bargaining.

11.1 CURRENT STATUS

The way in which the colleges organize for collective bargaining has changed little over the years. Ad hoc negotiating teams, without professed expertise in the negotiations process, have been assembled to negotiate with the academic and support staff bargaining units. Professional assistance has been given by the Staff Relations/Benefits Unit (SR/BU) of the Ministry of Colleges and Universities and legal counsel for the Council of Regents. Until the 1987 round of negotiations, legal counsel also acted as the spokesperson in negotiations. More recently, the negotiating teams have been chaired by administrators who have acted as spokespeople. Furthermore, the teams have contained greater representation from line administrators seconded from the colleges. For the 1987 round of bargaining, a steering committee for negotiations consisting of members of the Council of Regents, the Assistant Deputy Minister from MCU, and legal counsel have been responsible for developing the mandate for the negotiating team.[1]

For local contract administration, human resource or personnel departments of the colleges apply and interpret the terms and conditions of the collective agreement for the two bargaining units. For those employees not in the bargaining units, they apply guidelines provided by the Standing Committee On Terms and Conditions of Employment for Administrative Staff (SCOT) which is a sub-committee of the Council of Regents.

The provincial level administrative issues are handled by the SR/BU, as the official administrative body of the Council of Regents. It is responsible for:

- co-ordination of the actual negotiations for both support and academic staff, including working with the steering committees, and conducting all preparation, data gathering, analysis, and necessary communications for collective bargaining;
- attending all Council of Regents meetings, conducting all necessary studies, making presentations, and initiating and distributing the D-Memos, which are implementation directives on policy issues which apply to all colleges;
- overseeing the union-management relations by monitoring, scheduling and organizing feedback for approximately 15 college and joint union/management committees, as well as representing the Council and/or the Ministry on those committees;
- providing leadership in the form of answering inquiries, providing advice, and offering solutions to individual colleges regarding all aspects of employee relations;
- conducting the archival, scheduling, and dissemination functions of all aspects of arbitrations, including referrals and awards;

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[1] See Figures 10.1 and 10.2 in Chapter 10 - "The Parties to the Negotiations".

- administering all benefit packages for all college employees, and providing any necessary research related to pensions, benefits, etc;
- continued development and implementation of the Human Resource Information System.

For those employees outside of the bargaining units, the duties of the SR/BU closely parallel those outlined above. With the assistance of the SCOT committee, the SR/BU establishes and reviews the salary schedules and all terms and conditions of employment, including a formal grievance procedure, for the administrative staff. While the local colleges are responsible for the application of the guidelines, the SR/BU is responsible for their preparation, monitoring, publishing and distribution. It also offers a guidance service to the local colleges to assist them in responding to complaints and grievances.

11.2 DISCUSSION

The employers' association (CERA) must have the ability to research thoroughly for negotiations, produce a realistic estimate of what it will cost to achieve an agreement without a strike, consult with the government so that a realistic mandate can be developed, negotiate with the union to get an agreement, and administer those aspects of the collective agreement with system-wide implications. It is central to the concept of 'ownership' that CERA operate with the involvement of the colleges, because each and every college will have to work with the agreements, both in their negotiation and their administration.

11.2.1 The Organization Issue

The composition of the employer's negotiating team has resulted in a lack of consistency between the teams from contract to contract. Although the composition has recently been altered, problems persist. Qualitatively, the participants from the colleges report this to be a more effective structure, however, the union teams report very little difference from previous sessions. Objectively, it appears to be taking the same length of time to conclude agreements with this structure as with previous ones.

A second difficulty with the current employer organization for negotiations is the lack of 'ownership' of the agreements by the colleges that results. While the colleges are consulted by the negotiating teams and the steering committee, they are not formally involved in ratifying any agreement reached by the Council of Regents. This contributes to the lack of 'ownership'.

While the SR/BU functions as a 'corporate' employee relations function, it is not a good example of what an effective corporate function can be. The difficulty lies in its perceived lack of authority among the colleges. Although the Council of Regents is the designated bargaining agent for collective bargaining, and the SR/BU is its official secretary and administrator, it is not considered to be an authoritative voice on collective bargaining matters by all or even most of the colleges. This has proven especially difficult in attempts to achieve consistency of administration, particularly with issues of system-wide application.

System-wide issues are currently dealt with by a sub-committee of the Council of Regents, the Grievance and Arbitration Sub-Committee. This committee is composed of senior college administrators, a representative of the Committee of Presidents, and a representative of the Ministry and meets as and when necessary, usually four or five times per year, to deal with referrals from the colleges. The issues referred to the sub-committee are those which are felt by the colleges to have system-wide application, and if the committee agrees with the college that their particular issue has broad application, the college will be subsidized by the committee as the issue proceeds through the arbitration process.

Most referrals are clearly either system-wide or purely local, and there are few ambiguities over the scope of the application. However, complications arise because the committee is an informative source, as opposed to an authoritative source, and cannot enforce its decisions. If a college does not agree with a committee decision that an issue is not of system-wide application, or does not even submit the grievance to the committee, and takes the case to arbitration, the committee must passively observe. If the college then loses the case the Union begins an organized effort to raise the same issue with other colleges in order to take advantage of the new jurisprudence which has been decided in their favour. This results in a costly and repetitive process, for both the colleges and the union.

The tool that has been used in attempting to achieve consistency in administration is the D-Memo. It is an implementation directive initiated in the SR/BU but under the authority of the Council of Regents. Evidence suggests, however, that the D-Memo has not, recently, been very successful in achieving this consistency. Skolnik cited the conflicting arbitration awards regarding the Instructional Assignment issue,[2] and all indications are that this type of behaviour continues, although not specifically for the Instructional Assignment issue. The 1980 Stevenson-Kellogg report on salary scales for administration indicated that administrators received inconsistent treatment across the system. The report stated that there were 22 methods of administering the salaries of the 1,700 administrative staff found in the CAAT system.[3]

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[2] "Survival or Excellence: Report of the Instructional Assignment Review Committee", by Michael Skolnik, Chairman, July 1985, p. 27.

[3] "Unravelling the Gordian Knot - Focussing on Perceptions", By Stevenson Kellogg Ernst & Whinney, November, 1986, vol. 1, p. 1.

This is not to suggest that a centralized employee relations function should be the one and only authority on matters of contract interpretation and other employee relations issues. The line management of any enterprise must have the authority to act in its area of responsibility. However, the effective centralized employee relations function should have a good deal of influence, access to the senior line administrators and managers, and the resources to train and develop those administrators so that they may do an effective job of administering and interpreting the collective agreement, in both its letter and spirit.

11.2.2 The Information Issue

For a system which spends over $750 million each year on its administrative, academic and support staff, the lack of information at both the central and local level is, without exaggeration, appalling.

The lack of statistical data analysis pertaining to the colleges, in both bargaining units, has been a recurrent and sensitive issue in the history of negotiations. This was identified by the board chaired by Mr. Justice Estey in its arbitration award under CECBA[4] and has been repeatedly blamed by fact finders, mediators, and other observers as the cause of many of the problems between the parties. Skolnik's Instructional Assignment Review Committee was unable to do the necessary quantitative analysis to identify the actual state of workload, because the data base and information systems did not exist. This commission has also been limited in its research because of the same deficiencies.

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[4] An Act to provide for Collective Bargaining for Crown Employees, 1972, c. 67.

For example, the only profile that the SR/BU has of part-time employment in support staff is a one-week 'snapshot' in the spring of 1987, derived from a college-based survey and of dubious reliability, which was done for collective bargaining purposes.[5] There is no trend data on the use of part-time support staff or academics. No-one appears able to determine how many part-time employees are utilized, what programs they teach in, what kinds of workloads they have, or how much of continuing education is taught by full-time teaching masters who are moonlighting. All of this is relevant, important, and necessary data.

In the absence of such data, it is hard to understand how the SR/BU and the Council of Regents can undertake financial planning and do the necessary research to conduct negotiations in a competent and professional manner. What should be a relatively simple modelling exercise - such as projecting the possible costs of extending pro-rated terms and conditions of employment to part-time employees - cannot be done within reasonable limits of accuracy on the existing data base. Simple questions such as "How many workload arbitrations have there been under the new workload arbitration article which was negotiated by the Council?" cannot be answered from any kind of central data base.

It is not this Commission's purpose to ascribe blame for this information deficiency to any department or person. But it must be pointed out that the SR/BU and the colleges, under the overall umbrella of the Council of Regents have, either deliberately or by omission, due to lack of expertise or lack of funds, or by some perverse refusal to get together and do it, totally failed in this important aspect of employee relations management.

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[5] A summary of the survey results is given in Chapter 13 - "Bargaining Units".

A cynic might be tempted to say that the lack of reliable and valid data has served the purposes of the colleges and past governments well. Faced with accusations of wrongdoing on a case-by-case basis, it is at least some defense to plead absence of information or, more aggressively, to put the onus on the union to prove its case. However, this type of response to bargaining demands builds both frustration and contempt for the motives and the abilities of the other party, and is destructive to the bargaining relationship.

The current information data base is inadequate for all aspects of collective bargaining: its planning, active negotiations, or collective agreement monitoring phases. Centralized negotiations and localized contract administration require that each college have its own human resource information system, but that these systems be compatible in allowing for the extraction of common data on a system-wide basis. If collective bargaining in the colleges is to be done constructively, the information collection must be done well.

11.3 RECOMMENDATIONS

The task of organizing and managing an employers' association, conducting complex negotiations skillfully, obtaining the necessary consistency in contract administration across the system of colleges, and developing and maintaining a constructive collective bargaining relationship with unionized employees, requires a professional organization staffed with competent people. The recommendations in this chapter of the report are designed to:

- present an effective organizational structure for the conduct of collective bargaining, including negotiations and contract administration, at the system-wide level;
- identify the position specifications and personal characteristics of the person to lead, organize, and direct this function for the colleges.

Recommendation #10

A Colleges Employee Relations Directorate (CERD) should be established and be financed by a levy on each college.

This directorate should report to CERA, through its executive committee, and be responsible for research related to negotiations, forecasting the costs of settlement, developing a negotiating mandate with the colleges and the Ministry of Colleges and Universities, conducting negotiations (assisted by a negotiating team selected from the colleges), and the processing of ′college′, ′policy′ or ′union′ grievances with system-wide implications.

CERD should be headed by an Employee Relations Director, who would be a senior and experienced employee relations professional. Other staff should include an employee relations officer, an analyst, and clerical assistance.

Recommendation #11

The Colleges Employee Relations Directorate (CERD) should provide information on long-term trends in employee related costs to the Council of Regents.

Recommendation #12

The Colleges Employee Relations Directorate (CERD) should undertake consultations over salaries, benefits, and working conditions with the Professional Staff Association (PASA), or any other organization which can demonstrate that it represents substantial numbers of non-unionized employees.

Recommendation #13

The Ministry of Colleges and Universities should adjust its funding to the Colleges so that they can establish CERD. This is estimated as $ 750,000 per year in current dollars. Since it is recommended that CERD take over many of the functions now performed by the Staff Relations/Benefits Unit of the Ministry, the net new expenditure is expected to be minimal.

Recommendation #14

The Ministry of Colleges and Universities should provide funding to the colleges and the College Relations Commission for the development of a comprehensive, system-wide, human resource information system for use at both local and provincial levels. This should be done by CERD in cooperation with OPSEU and the College Relations Commission. The one-time cost should be approximately $200,000.

Recommendation #15

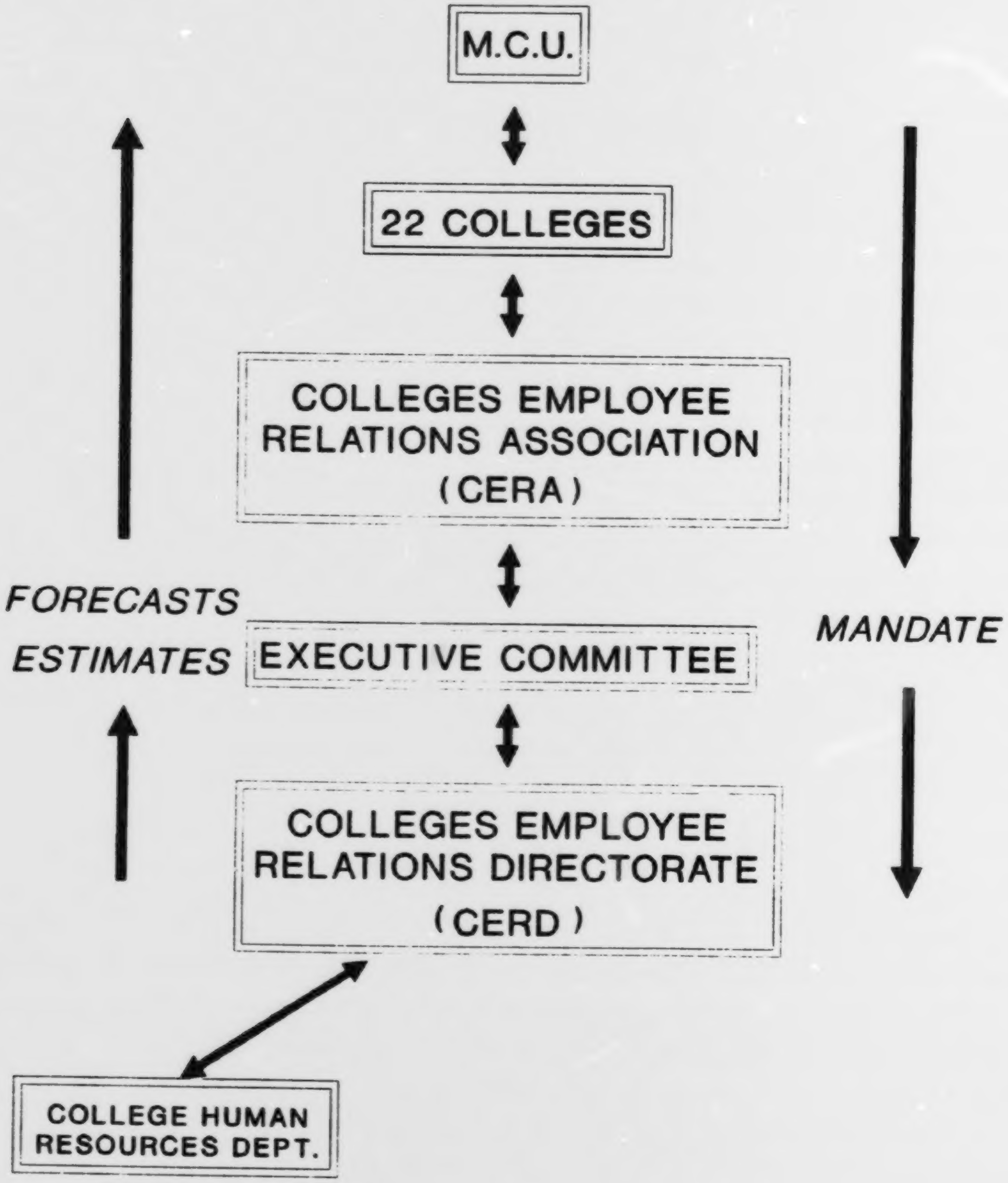
Major decisions within CERA, including ratification of mandates and collective agreements, should be by a ´double majority´ system, requiring a majority of the colleges which also represent a majority of the members of the respective bargaining units.

Recommendation #16*

Ratification of collective agreements by the union should also follow this double majority process but be based on a majority of colleges and a majority of votes cast overall.

The recommended structure and functions of the government, CERA, CERD, and college human resource management departments is illustrated in Figure 11.1.

FIGURE 11.1
COLLEGES EMPLOYEE RELATIONS ASSOCIATION


M.C.U.
22 COLLEGES
COLLEGES EMPLOYEE RELATIONS ASSOCIATION (CERA)
FORECASTS
ESTIMATES
EXECUTIVE COMMITTEE
MANDATE
COLLEGES EMPLOYEE RELATIONS DIRECTORATE (CERD)
COLLEGE HUMAN RESOURCES DEPT.

11.4 BASIS FOR RECOMMENDATIONS

11.4.1 Colleges Employee Relations Directorate

The need for technical competence in negotiations is so obvious that it requires little elaboration. A total salary and benefits budget of over $ 750 million is involved in the college system, and skillful negotiations are essential to the responsible management of these expenditures. In a regime based on provincial bargaining, a strong, centralized employee relations directorate is essential to achieve the right blend of professionalism and consistency in the system. The position and person specifications for the director of CERD are outlined in Figures 11.2 and 11.3.

CERD will require additional staff in the form of an employee relations officer/analyst, as well as secretarial and clerical assistance. In addition, substantial travel and communications budgets will be required if the CERD director and employee relations officer are to develop the kind of working relationship with the individual colleges that is necessary to preserve the balance between centralized and decentralized employee relations management. It is possible that the resource requirements may grow over time but, for the present, a staff of one employee relations officer, an analyst, and clerical support should be sufficient to run the operation.

Interaction with the Council of Regents

The new mandate of the Council of Regents focuses on longer term planning and policy advice to government. The financial implications for CERD of such planning clearly depends, at least to some extent, on the implications of policy for collective bargaining and vice versa. The Colleges Employee Relations Directorate should be useful to the Council of Regents in preparing financial forecasts and positions on the employee relations implications of policy and program initiatives.

FIGURE 11.2

DUTIES OF DIRECTOR, CERD

- Manage a collective bargaining research effort involving the gathering and processing of data from a variety of sources including the colleges themselves, pay and benefits research bureaus and agencies, employee surveys, other government departments, and other sources;
- work with the presidents and human resource personnel in the 22 colleges to develop a consensus around bargaining priorities;
- provide forecasts to the Ministry of Colleges and Universities so that the appropriate financial resources are made available to the colleges;
- negotiate collective agreements with the unions representing organized employees and consult with representatives of unorganized staff in the colleges;
- explain such agreements to the individual colleges and conduct such educational programs as are necessary to ensure that they are understood;
- maintain a balance between centralized control of issues with system-wide implications and other issues which are properly within the purview of local employee relations;
- monitor the administration of the collective agreement at both local and system levels;
- develop an ongoing, consultative, and constructive relationship with employee organizations so that misunderstandings are identified and resolved, and ongoing problems are dealt with between formal rounds of negotiations.

FIGURE 11.3

PERSON SPECIFICATIONS - DIRECTOR OF CERD

- At least ten years experience in collective bargaining, preferably in a multiple-employer or multiple-plant situation, as chief negotiator;
- experience in public-sector negotiations, preferably with educational institutions;
- well-developed interpersonal skills, including problem-solving, negotiations, and written and verbal communications skills;
- some track record of having turned around poor labour relations climates to more constructive ones.

Consultations on Salaries and Benefits for Non-Organized Employees.

It is not unusual in unionized situations to find large groups of managers and other exempt employees who feel that they are without adequate mechanisms for discussing salaries and benefits for themselves. This appears to have been the case in the college system. A brief received from the Professional Administrative Staff Association (PASA) indicated substantial and significant feelings of neglect. For example, when workload and vacation time were negotiated for unionized employees, the members of PASA found themselves unable to get adjustments to their terms and conditions of employment. It was not that they expected identical treatment, but rather they felt that there was no one to hear their case.

Negotiations or, in this case, consultations by the Council of Regents are inconsistent with the new mandate of the Council. Since no other mechanism exists for dealing with the issues of salaries, benefits and other terms of employment for non-unionized administrative staff, the new Colleges Employee Relations Directorate should conduct this function on behalf of the colleges.

Decision-Making within the Bargaining Agents

Both bargaining agents have to make a number of decisions concerning an appropriate mandate and, eventually, about ratification of whatever settlement is negotiated between the two bargaining teams. While many of these decisions are reached by consensus, votes are sometimes needed and are, in fact, mandatory for ratification, strikes, or lock-outs.

On the employer's side there is some concern that a simple majority, such as 12 of the 22 colleges or '50 percent plus 1' of the full-time-equivalent students or staff, might lead to a situation in which small colleges could dominate (in the case of 'one college one vote') or large colleges could dominate (in the case of a majority of students or staff).

Situations such as this are best handled by a 'double majority' voting procedure in which outcomes are determined by a majority of colleges accounting for a majority of students or staff. In the college system it appears that it would be relatively simple to determine the number of members in each bargaining unit and therefore this measure is recommended.

Such systems are not without their problems. Double majorities can, under certain circumstances, lead to unusual coalitions being formed with relatively small institutions holding important swing votes. However, a study for the Commission conducted by Professor Ann Francescon indicates that, due to the considerable number of combinations of 12 or more colleges which would have 50 percent plus 1 of the students (over 5,000 combinations), the probability of dysfunctional coalition formation is extremely small.[6]

OPSEU has argued that to impose such a voting regime on the Union is interference with its constitution and meddling in internal union affairs. Nevertheless, the logic that holds on the employer side, also holds on the Union side. Such double majority voting requirements are intended, among other things, to increase the sensitivity of central bargaining agents to issues and matters affecting their constituent parts. This is precisely what is needed in the colleges and this recommendation will reinforce the emphasis on supplementary local negotiations.

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[6] Ann Francescon, "CAAT Contract Ratification - Effect of Double Majority System", October 1987. Professor Francescon's study was based on the number of full-time-equivalent students rather than members of the bargaining units. However, there is an almost perfect correlation between these two variables.

12

EMPLOYEE RELATIONS IN THE COLLEGES

Up to this point, the focus of this report has been on collective bargaining at the provincial level. However, the Commission has also examined the issue of college-level employee relations. This second focus is particularly important because of the recommendation to encourage local negotiations and in recognition of the complex and interactive relationships between negotiations and contract administration at both local and provincial levels.

12.1 CURRENT STATUS

Under the provisions of the CCBA[1], each college is the employer of its academic and support staff. While each college operates under the same collective agreements, they have their own operating procedures, practices, and traditions. Moreover, many colleges have entered into local agreements which are applicable only to a particular college.

The colleges have a very large number of grievances which go to arbitration although, because of the inadequate data base maintained by the colleges and the Staff Relations/Benefits Unit, this Commission has some doubts about the validity of these data. As Table 12.1 shows, the arbitration awards in the college system were at the rate of 3.1 per 1,000 employees covered by collective agreements; this compares with 1.6 per 1,000 under CECBA[2] and 1.2

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[1] Colleges Collective Bargaining Act, R.S.O. 1980, c. 74.

[2] An Act to provide for Collective Bargaining for Crown Employees, 1972, c. 67.

per 1,000 under the LRA[3]. Importantly, the figures from the colleges do not include arbitrations under either the workload arbitration provisions of the academic collective agreement or the job classification system of the support staff agreement. These inbuilt arbitration processes are not tracked by the SR/BU and the data reported by the colleges to the Commission may not be comparable from college to college.

TABLE 12.1

COMPARISON ARBITRATION DATA

	Colleges	Grievance Settlement Board	Ministry of Labour
Arbitration Awards (1987)	43	98	1800
Affected Persons	13 800	60 000	1 400 000
Awards per 1000 affected persons	3.1	1.6	1.2

Source: This table was compiled from information provided by the Staff Relations/Benefits Unit in the College Affairs Branch of the Ministry of Colleges and Universities, the Grievance Settlement Board, and the Ministry of Labour Office of Arbitration.

Arbitration awards in the support staff bargaining unit have more than doubled in the last seven years; those in the academic unit have increased by 500 percent (Table 12.2). Since reaching a peak in 1984, the number of arbitrations (excluding those under the workload provisions) has declined to about 30 per year for the academic unit and 11 for the support staff; this decline in recorded arbitrations by the SR/BU coincided with the introduction of local workload resolution arbitrations which are not recorded by the SR/BU.

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[3] Labour Relations Act, R.S.O. 1980, c. 228.

TABLE 12.2

ARBITRATION AWARDS

	1980	1981	1982	1983	1984	1985	1986	1987
Academic Unit	5	13	39	40	64	31	35	32
Support Staff Unit	6	1	9	9	16	16	13	11

NOTE: This does not include arbitrations under the workload or job classification articles in the 1985/87 collective agreements.

Source: This table was compiled from information provided by the Staff Relations/Benefits Unit in the College Affairs Branch of the Ministry of Colleges and Universities.

While each college has at least one person responsible for human resource management in the college, in only 13/22 cases does the senior human resource professional report directly to the president of the college; 8/22 report to a vice-president or other ´second-level´ administrator; the remaining manager reports to a ´third-level´ manager. The human resource managers are, by and large, well-educated. 17/22 are university graduates and most have some post-graduate professional development in the fields of personnel management and/or employee relations. However, 12 of the 22 have five years or less experience in the human resource management field (Table 12.3).

While many people have commented on the negotiating relationship between the bargaining teams, others have had the opportunity to evaluate the state of employee relations at the local college level. Walter Pitman reported that the morale of

TABLE 12.3
SUMMARY OF HUMAN RESOURCES MANAGEMENT QUESTIONNAIRE

	Sr. Administrator HR Function (Title)	Reporting To (Level)	Years In Position	Yrs. of Prior Experience	Education Highest Level	HR/LR Prof. Develop.	Managerial/ Supervisory Subordinates
Algonquin	Director, Human Resources	Level 1	3.5	13.5	B.A.(Arts & Soc.Sc.)	X	3
Cambrian	Director of Personnel	Level 2	11	8	B.Comm.(I.R.)	X	1
Canadore	Director, Personnel Services	Level 2	1.6	5.4	B.Comm.(I.R.)	-	-
Centennial	Director, Personnel Services	Level 1	0	18	B.Sc./B.Ed.	-	3
Conestoga	Director, Human Resources	Level 1	5	15	Diploma	X	-
Confederation	Director, Employee Relations	Level 1	18	2	B.A.(Comm.)	X	2
Durham	Director, Human Resources	Level 1	3	5	B.A.	X	1
Fanshawe	Asst. Director, Human Resources	Level 3	9	0	B.Sc.	X	-
George Brown	Director of Personnel	Level 2	1.5	3.5	B.A.	X	-
Georgian	Manager, Personnel & Payroll Services	Level 2	6	1	B.Sc.	-	3
Humber	Director, Human Relations Centre	Level 2	.2	15	B.A.	X	2
Lambton	Vice-President, Administration	Level 1	2	3	CGA	-	1
Loyalist	Director of Personnel	Level 1	2	16	B.A.	-	-
Mohawk	Director, Human Resources	Level 1	1	14	M.A.(Labour & I.R.)	X	5
Niagara	Director of Personnel	Level 1	15	5	High School	X	-
Northern	Acting Director, Human & Plant Resources	Level 1	1	2	M.A.	-	1
Sault	Director, Human Resources & Student Serv.	Level 1	3.5	0	M.A.(Ed.Admin.)	X	2
Seneca	Dean, Human Resources	Level 2	2	0	B.A.	X	6
Sheridan	Director of Human Resources	Level 1	10	19	M.Sc.(Bus. & Ed.)	X	1
Sir Sandford Fleming	Exec. Dir., Student Serv., HR & Registrar	Level 1	5	0	B.A.	X	1
St. Clair	Director, Personnel Services	Level 2	7	6	Hist. 2 yr. B.A.	X	1
St. Lawrence	Director, Personnel Services	Level 2	15	5	B.A.	X	1

the faculty, support staff, middle management, presidents and governors was declining.[4] He drew no distinction between the different employee groups, and described each of them as having a *"confrontational style"* which required a change in culture in order to resolve problems. Skolnik also commented on the *"poor quality of the bargaining relationship"*[5] between the parties in the academic unit.

Michael Monty, a researcher for the Commission, studied the labour relations climates at several colleges.[6] His findings corroborated previous third parties´ perceptions that the atmosphere at the local level is characterized by extremely low levels of trust and a lack of accepted legitimacy of the union´s role by management, as well as of management´s role by the union. The faculty and support staff who participated in Monty´s study did not trust management to such a degree that he had difficulty finding people who would agree to an interview, lest they be somehow ´found out´ by management and punished. His related task of trying to videotape several interviews for the Commission proved, for similar reasons, to be infinitely more difficult.

12.2 DISCUSSION

12.2.1 Conflict in the Colleges

Many of the problems in the college system in the late seventies and early eighties had their origins at the individual college level.

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[4] "The Report of the Advisor to the Minister of Colleges and Universities on the Governance of the Colleges of Applied Arts and Technology", by Walter Pitman, June 1986, p. 4.

[5] "Survival or Excellence: Report of the Instructional Assignment Review Committee", by Michael Skolnik, July 1985, p. 5.

[6] "Michael R. Monty, "This Would Be A Wonderful Job If...", September 1987.

The early 1980's was a period of financial restraint for the colleges. Pitman stated that their reaction was to operate as *"industrial organizations"* rather than *"learning institutes"*, and that emphasis had been placed on the budget *"bottom line"*, rather than on *"quality of teaching, decision-making, and work relationships"*. He also described how the environment had affected collective bargaining.[7]

> *"With ever-increasing demands from expanding clienteles, and fewer resources per student activity, those who teach and those who support the teaching function, have been driven to collective bargaining, in an attempt to ensure that their wages and the quality of their working conditions were not eroded beyond hope. The confrontation over collective bargaining took on an energy of itself, becoming a major preoccupation of both sides."*

The funding pressures were dealt with by increased enrollment, increased class sizes, increased instructional assignments, and other productivity and efficiency improvement initiatives. Skolnik stated that difficulties in the academic parties relationship erupted when the government began to cut funding.[8] The funding cuts focused the administration's efforts on the difficulties of operating with fewer resources. This resulted in various ways and means of administering the terms and conditions of employment for employees, both in and out of the bargaining units, as well as between colleges.

The funding decreases also motivated the union to try to take a greater role in the decision-making responsibilities of the colleges. The collective agreements of both the support staff and academic staff introduced new clauses in the 1982/84 agreements that dealt with Financial Exigency. These new clauses ensured the union of immediate notice of job losses due to financial exigency, and gave them the opportunity to offer recommendations and alternatives for dealing with the problem. These new restrictions on bargaining unit member displacement pressured administrators into increasing the use of less expensive part-time, partial-load, and sessional staff. This category of employee could be brought into the college, and laid off from the college, without the administrators having to follow what they saw as lengthy and expensive layoff and severance provisions in the collective agreements.

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[7] "Report on Governance", p. 2.

[8] "Survival or Excellence", p. 42.

At the same time, the colleges were also introducing new technology. The union was concerned about the effects of these changes for their members, and language was negotiated into the agreement which outlined the preferred methods for dealing with displacements from technological change. This was seen by many managers and administrators as a further erosion of their management rights and autonomy.

As well as the environmental factors influencing contract administration, the impact of protracted negotiations cannot be underestimated. The time-consuming negotiations contributed to an atmosphere of uncertainty and insecurity within the colleges. The propaganda war, the denigration of the ´enemy´ which tends to be reflected in the literature distributed by the union, the accusations of lying, double-dealing, and other heinous crimes, all contributed to an unsettling and unsettled college environment. Several individuals who agreed to speak with Michael Monty specifically identified the negotiations period as stressful. Pitman also states that his report was affected by the *"undercurrent of the current round of negotiations"*.[9]

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[9] "Report on Governance", p. 2.

While the above factors have all contributed to the poor climate of employee relations at the college level, several other factors have also played a key role. Most frequently cited is the lack of a sense of ownership of the agreement because of the separation between those who negotiate the agreement and those who administer it. Walter Pitman was succinct on this problem:[10]

> *"Currently both management and the union locals are able to disclaim ownership in the settled contract because they can pass the responsibility on to the centre."*

Contributing to the lack of ownership felt by the colleges at the local level is the current division of duties between the provincial and local organizations for collective bargaining. The administrative duties of the Council are carried out by yet a third management body - the Staff Relations/Benefits Unit in the College Affairs Branch of the Ministry of Colleges and Universities. As indicated by Pitman, and outlined extensively in the previous chapter, it is convenient for the colleges to pass responsibility on to this central body, and then not follow its suggestions.

While negotiating is done centrally by the Council of Regents, the colleges protect their local autonomy, and have been quite resistant to accepting any form of intervention which would induce that feeling of ownership. In addition to resisting SR/BU assistance when it was offered, the colleges also rejected assistance in Relationship by Objectives and Grievance Mediation programs which were offered by the College Relations Commission in the early and mid-eighties.[11]

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[10] Ibid., p. 19.

[11] Between March 4, 1983 and September 25, 1984 the CRC executive visited 14 colleges in order to make colleges' administrators aware of the Relationship by Objective and Preventive Mediation programs available.

The centralized employee relations function, the SR/BU of the Ministry, lacks authority and influence and has not established the human resource management information system which would allow it to monitor terms and conditions of employment, either in the system as a whole or in the individual colleges.

12.2.1 Consistency and Flexibility

The art of managing human resources involves the delicate balance of consistency and flexibility. Consistency of managerial action involves treating like issues, in like ways, under like circumstances. Flexibility requires managers to recognize that different events occur under varied circumstances and managerial decisions must reflect such variance. The rule book has never been written which will allow managers to suspend their critical judgement in deference to bureaucratic procedures.

However, whenever critical judgement is used, whether about what constitutes a reasonable workload or how a job should be classified, there can be some perception of inequity. And, in a 22 college system, there will inevitably be different standards and different interpretations from department to department and college to college.

One of the ways to minimize inconsistency is to centralize decision-making. In theory, at least, this would lead to one interpretation of collective agreements, rules, and policies which would be binding on all colleges in the system. There would be less confusion which results from large numbers of arbitration rulings which say different things about the same collective agreement.

However, centralization of this type is the enemy of flexibility and clashes with the objective of attempting to resolve complaints and grievances at the lowest possible hierarchical level in the organization by those who are intimately aware of the issue and its context. Moreover, in a large system centralization would introduce time delays in conflict resolution and such delays themselves exacerbate conflict.

The alternative is to train first-line and more senior administrators so that they understand the collective agreement and other policies both in their letter and their spirit. Furthermore, they require a high level of training in interpersonal skills essential for management so that they are able to manage well within the framework of the collective agreement. Such training requires more than the traditional one-half or one-day seminar in which people learn **about** skills; it takes much longer to learn **how** to do something than **what** to do!

12.2.3 The Human Resource Perspective

Even the very best administrators, who are well trained, require assistance occasionally. This is because they seldom have sufficient exposure to issues which can arise under a collective agreement to develop their knowledge and judgement about all of its aspects. Furthermore, their perspective is usually limited to their own departmental areas of responsibility. They often require and need a more ′corporate′ perspective, a sense of how similar issues are handled elsewhere in their college or in other colleges. Therefore, an expert, professional, and influential human resource department is required in organizations as large as most of the colleges. This department should serve as consultant, advisor, interpreter for the administrators whose responsibility it is to manage the human resources.

There are many decisions made in colleges which are not ′personnel′ or ′labour relations′ decisions within the narrow meaning of those terms. Program initiation and discontinuance, the allocation of space, the location of new campuses or campus extensions, and others all have human resource implications.

Some of these are direct and others indirect. All too often these human resource implications become apparent late in the decision-making or planning process, rather than early. Many organizations have found that one of the ways to avoid this happening is to ensure that there is a human resource perspective brought to bear when decisions are being considered by the executive committee or other senior decision-making body.

12.3 RECOMMENDATIONS

The recommendations in this chapter are designed to achieve four objectives:

- achieve the right blend of consistency and flexibility in the administration of collective agreements in the colleges;
- encourage conflict resolution at the lowest possible hierarchical level within the colleges;
- bring a human resource management perspective to all major decisions taken in the colleges;
- increase the skill and professionalism levels of the human resource professionals within the colleges so that they can prepare for and negotiate local supplemental agreements with their local union.

Recommendation #17*

Amend the CCBA to provide for a category of 'system-wide' grievances. Such grievances will be considered to be between the Colleges Employee Relations Association (CERA) and the employee organizations.

Recommendation #18

Transfer the functions of the Staff Relations/ Benefits Unit of MCU to the Colleges Employee Relations Directorate. Include in the mandate of CERD the responsibility for giving advice to the colleges on the administration of the collective agreements while ensuring that actual administration remains at the local college level except for 'system-wide' grievances.

Recommendation #19

CERD should develop, in cooperation with the senior human resource managers in the colleges, and the employee organizations, a training and development program in contract administration knowledge and skills, which is based on the colleges' collective agreements and which becomes part of the professional development of academic and support staff administrators and managers, as well as stewards and other union officers.

Recommendation #20

Competence in contract administration activities should be included as a performance criterion in the performance appraisal systems that the colleges use for managers and administrators.

Recommendation #21

CERD should adopt the practice of collecting, analyzing, and disseminating interpretations of arbitration awards issued within the system. This should include awards under workload and classification provisions, even though such awards may not be binding on other colleges.

Recommendation #22

Each college should have a senior human resource management professional, at the vice-president level, who participates actively in executive committee decisions even if they do not apparently involve narrowly defined employee relations matters.

Recommendation #23

CERD should develop an employee relations survey in cooperation with the colleges and OPSEU. This survey should be administered on at least a bi-annual basis to track the employee relations climate.

12.4 BASIS FOR RECOMMENDATIONS

12.4.1 Consistency and Flexibility

The recommendations reflect a need to keep a balance between consistency and flexibility in contract administration. Keeping such a balance is always difficult and there are many employee relations situations in which too great a centralizing tendency has resulted in bureaucratization of contract administration, or where too little central influence has resulted in dysfunctional inconsistencies which have complicated centralized collective bargaining. Tensions such as these have to be managed and such management will be the joint responsibility of the Director of Employee Relations of CERD and the college human resource managers.

12.4.2 Training and Development

The recommendation for a training and development program for **all** managers and administrators who have any involvement with contract administration is not made lightly. If contract administration is to be done well - and it **must** be done well - developing such a program is no trivial task. It is relatively easy to spend a day going through a collective agreement, reviewing the formal steps in the grievance procedure, and the roles and responsibilities of the parties. It is a fundamentally different matter to actually develop the skills required to administer a collective agreement well at the first-line management level.

Such a comprehensive knowledge- and skills-building program will take at least five full working days before the participants will understand the concepts, learn the skills, and develop confidence in their use. Furthermore, these skills will need to be refreshed from time to time - probably one day a year.

The value to be derived from expertly developing the program is manifold. Not only will administrators and managers be able to administer the collective agreement in a better fashion, but the explicit commitment of resources to training will underline the commitment of the senior management in the colleges toward effective contract administration. Mere exhortation, without the commitment of time and resources, will undoubtedly be interpreted as a low level of commitment.

Ideally, such a program should be developed and delivered in cooperation with the employee organizations. Experience indicates that it is perfectly feasible to do this, and that it is very useful to work with unions in developing and delivering this type of program. In addition to acquiring the unions' perspectives and expertise, failure to involve them tends to convey an impression that 'anti-union' management training is going on. Indeed, joint development and delivery of such programs can be a positive factor in improving understanding and building constructive relationships at the college level.

12.4.3 Dissemination of Employee Relations Information

An important function of CERD will be to ensure that each college is aware of decisions made by arbitrators or by the parties themselves either at the system or individual college levels. This will require close cooperation between CERD and the human resource departments in each of the colleges and the generation of an employee relations newsletter of some form for distribution to administrators.

12.4.4 Performance Appraisal

If an activity is important, then its importance must be continuously emphasized. There is no better way to do this than through the performance appraisal system. Conversely, if managers are not appraised on their competence in human resource management, including contract administration, then it is hard to convince them that this issue is a priority for senior management.

Each college has its own appraisal system, some simple, and others quite sophisticated. Each of them should include ´contract administration´ as a key criterion, and where there is a management-by-objectives or a key-results system, there should be goals set´for such outcomes as grievances, arbitrations, training and development in contract administration, and so on.

12.4.5 Status of Human Resources Management

The recommendation to involve senior human resource managers in the decisions made by the executive committee is based on two observations. First, every senior manager thinks that he or she is a human resource manager. However, in reality, they have different priorities and usually lack the specific professional knowledge that an experienced, senior human resource executive has accumulated.

Second, the inclusion of a senior human resource manager in the executive committee is designed to provide balance to that committee. If budgets are being discussed, they should be discussed from a human resource and employee relations perspective, as well as from an academic program delivery perspective. The long- and short-term implications of strategic and operational decisions must be assessed from both human resource management and employee relations perspectives. A junior human resource manager, perhaps reporting to a vice-president, cannot usually represent this perspective and therefore participate effectively in the executive committee meetings. Status is important, and equal status is necessary to achieve the required balance between operational expediency and good, progressive, human resource management. The presence of a high status, highly competent senior human resource manager also sends strong signals, to both other managers and employee representatives, regarding the priorities of senior administration.

12.4.6 Employee Relations Survey

Without good data on the state of employee relations on a trend basis, it is almost impossible to focus attention on areas requiring managerial action unless and until a crisis occurs. Such routine ´tracking studies´ of employee attitudes and concerns should be as routine a component of the management information system as monthly and quarterly budget reports. The very best organizations conduct them routinely.

12.4.7 Financing of CERD Activities

These various activities, such as training and employee surveys, cost money. Their financing should be from the colleges by some form of levy which goes to CERD to administer. No specific recommendations for this have been made in this report since it should be left to CERA to decide how to do these things. However, the funding process of the colleges should recognize their need to do this kind of work.

13

BARGAINING UNITS

A bargaining unit is a group of employees which is legally designated as an appropriate unit for purposes of bargaining. This chapter of the report addresses the question of the composition of the bargaining units within the colleges. It deals with several contentious issues, including:

- which groups of employees should be allowed bargaining rights and which should be excluded from bargaining under the CCBA;[1]
- which bargaining units employees should be in;
- whether employees who are allowed bargaining rights and who are not currently in bargaining units should be compelled to be in specifically designated bargaining units or be allowed to vote on the issue;
- whether the current bargaining agent should automatically be given the representation rights for any new bargaining units which are to be formed;
- the adjustment process necessary to ensure relatively smooth integration of people into new bargaining units.

13.1 CURRENT STATUS

There are several categories of employees in the colleges who are currently denied the opportunity to participate in the collective bargaining process. This is a result of specific exclusions in the CCBA and decisions by the Ontario Labour Relations Board that the Labour Relations Act[2] does not cover college employees[3]. The largest excluded groups are:

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[1] Colleges Collective Bargaining Act, R.S.O. 1980, c. 74, s. 1 (b). See specifically Schedules 1 and 2 in the Act.

> Academic Staff
> Part-time academic staff who teach six (6) or less hours per week.
>
> Counsellors and librarians who are employed on a part-time basis.
>
> Sessional academic staff who are appointed for not more than twelve (12) months in any twenty-four (24) month period.
>
> Academic staff above the rank of chairperson, including department heads, deans, and senior academic administrators.
>
> Support Staff
> Employees who work less than twenty-four (24) hours per week.
>
> Employees who work on projects of a non-recurring kind. This category covers occasional, casual, and seasonal employees.
>
> Students employed in a co-operative educational training program at any college, school, or university.

13.2 DISCUSSION

13.2.1 The Utilization of Part-Time and Sessional Employees

The issue of part-time employees has been a continuing source of frustration for the Union and a recurrent problem in collective bargaining. Although these employees are not union members or members of bargaining units represented by OPSEU, the Union has felt compelled to try to represent them. While some of this is motivated by genuine concern for the plight of part-time and sessional employees, it is also motivated by healthy self-interest. If part-time and sessional employees are less expensive to employ because of lower salaries and benefits, or if they can be used more flexibly because they do not have access to layoff and recall procedures, then the employer is tempted to convert more and more positions to part-time status and to staff new positions with part-timers or sessionals. Without extreme vigilance on the part of a union, this would lead to a leakage of jobs from the bargaining units, a threat to their members' job security, and a loss of union dues revenue. From an administrator's point of view, the opportunity to use the least expensive and most flexible resource is one that cannot be responsibly passed up when faced with cost pressures and enough people who are willing to work on a part-time basis.

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[2] Labour Relations Act, R.S.O. 1960, s. 202.

[3] See Chapter 4.2.1 for a description of the relevant events.

Throughout the history of negotiations, the OPSEU academic unit has shown increasing concern over the use and treatment of sessional and part-time employees. The Union has consistently attempted to include Extended and Continuing Education teachers in the bargaining unit, bargained for protection of full-time jobs from part-time appointments, and demanded some form of job security and consistent working conditions for sessional or short contract employees.

The support staff negotiations have also concentrated on the part-time issue. The parties have attempted to address, in particular, alleged abuse of the short term contract employee by including language specifically relating to short contract employees under an appendix to their collective agreement. There remains, however, the concern over the erosion of the bargaining unit by an allegedly increasing number of part-time appointments.

It appears that there could be more problems in the future. A survey conducted by the Ministry of Colleges and Universities Staff Relations/Benefits Unit indicates that use of part-time employees in both support and academic positions is widespread. This 'snap-shot' survey covering the period March 29 - April 11, 1987 indicated that there were 3,870 part-time support staff employed by the colleges. When full-time and part-time are combined, over 40 percent of the total is accounted for by part-time employees. Of those part-time employees, almost 30 percent have a regular commitment to the college, and over 20 percent have a semi-regular attachment. Interestingly enough, every category of support positions, except computer services and student positions, is female-dominated and over 64 percent of the part-time employees are female. The above data are summarized in Table 13.1.

A similar survey for the academic staff in April 1987 indicated that over 25 percent of total teaching contact hours in both credit and non-credit courses were delivered by partial-load, part-time day, part-time continuing education, sessional, and temporary employee categories. In terms of number of teachers, the 12,000 ′less-than-full-time′ employees are one and one-half times the size of the current bargaining unit of approximately 8,200. The largest group of these teachers is the part-time continuing education teachers (approximately 40 percent), who deliver 10 percent of the system′s teaching hours. The number of part-time day teachers and sessionals are relatively equal in terms of numbers, approximately 7 percent in each category; however, the sessionals teach a disproportionate amount of teaching contact hours (approximately 8 percent), relative to the part-time day teachers (approximately 3 percent). These data are summarized in Table 13.2. The Ministry was unable to provide data from previous years which might indicate trends in utilization of part-time or sessional employees.

13.2.2 The Legislative Framework

Professor Don Carter, previous Chairman of the Ontario Labour Relations Board and current director of the Industrial Relations Center at Queen′s University, and Professor Marlene Cano of the

TABLE 13.1

PROFILE OF SUPPORT STAFF IN THE COLLEGES

MARCH 29 - APRIL 11

REASON (Name)	NO. OF EMPLOYEES M	F	TOT	% OF SYS TOT
Replacement - L.T.D.	1	6	7	0.2%
- S.T.D.	22	30	52	1.3%
- Pregnancy Leave	4	37	41	1.1%
- Prepaid Lve Plan	0	1	1	0.0%
- Vacation	1	11	12	0.3%
- Comb. of Above	3	9	12	0.3%
- Other	54	120	174	4.5%
Project of Non-Recurring Kind	150	238	388	10.0%
Co-Op Ed Student Placement	34	32	66	1.7%
Grad Fullfilling Certification	2	2	4	0.1%
Seasonal Worker	19	49	68	1.8%
Part-Time Regular	207	935	1142	29.5%
Part-Time Non-Regular	330	544	874	22.6%
Students - Academic Regulated	307	256	563	14.5%
- Special	120	139	259	6.7%
- College Operations	108	99	207	5.3%
SYSTEM TOTALS	1362	2508	3870	100.0%
Total Bargaining Unit Members			5628	
TOTAL SUPPORT STAFF			9498	
DURATION				
1 month or less	48	111	159	4.1%
More than 1 month and up to 3 months	294	417	711	18.4%
More than 3 months and up to 6 months	373	521	894	23.1%
More than 6 months and up to 1 year	478	808	1286	33.2%
More than 1 year	40	84	124	3.2%
Continuous (e.g. Regular Part-Time)	129	567	696	18.0%
TOTAL	1362	2508	3870	100.0%

Source: Staff Relations/Benefits Unit Survey, June 1987.

TABLE 13.2

PROFILE OF ACADEMIC STAFF IN THE COLLEGES

APRIL 1987

CREDIT AND NON-CREDIT COURSES

SEPTEMBER - DECEMBER	TEACHERS	PERCENTAGE OF TEACHERS	TEACHING CONTACT HOURS	PERCENTAGE OF TEACHING
Full-Time Post-Secondary	6330	31.7%	1443240	54.3%
Full-Time Non Post-Secondary	1571	7.9%	483397	18.2%
Total Full-Time	7901	39.6%	1926637	72.5%
Partial Load	1075	5.4%	117909	4.4%
Part-Time Day	1524	7.6%	74467	2.8%
Part-Time Continuing Education	7992	40.0%	320484	12.1%
Sessional	1206	6.0%	208613	7.9%
Temporary	267	1.3%	8246	0.3%
Total Less-Than-Full-Time	12064	60.4%	729719	27.5%
JANUARY - MAY				
Full-Time Post-Secondary	6330	31.6%	1635672	54.3%
Full-Time Non Post-Secondary	1874	9.4%	625037	20.7%
Total Full-Time	8204	41.0%	2260709	75.0%
Partial Load	1137	5.7%	134662	4.5%
Part-Time Day	1558	7.8%	83634	2.8%
Part-Time Continuing Education	7447	37.2%	270748	9.0%
Sessional	1433	7.2%	255725	8.5%
Temporary	237	1.2%	8528	0.3%
Total Less-Than-Full-Time	11812	59.0%	753297	25.0%

Source: Staff Relations/Benefits Unit Survey, July 1987.

University of Ottawa/Universite d'Ottawa, summarize the current part-time situation in the colleges:[4]

> *"The present fate of the part-time college employee is to remain in an industrial relations vacuum with no recourse to any statutory collective bargaining regime.*

Carter and Cano looked at four comparisons of the treatment of part-time employees: other colleges in Canada; private sector legislation; other public sector legislation; and the Ontario educational sector. They show that the exclusion of part-time college employees from collective bargaining is not without precedent in Canadian jurisdictions. New Brunswick specifically excludes part-time employees, while Saskatchewan, Nova Scotia and Manitoba indirectly do so through defining the bargaining unit, as opposed to through the legislation itself. No restrictions exist in Alberta, British Columbia, Newfoundland, Prince Edward Island or Quebec, where part-time employees are included in the same bargaining unit as full-time employees.

Canada's private sector collective bargaining legislation covers all part-time and casual employees, regardless of the level of hourly attachment to a job. Federal public sector collective bargaining legislation, as well as legislation in New Brunswick, Nova Scotia, and Ontario, restricts certain part-time and casual employees from access to collective bargaining.

In the educational sector in Ontario, part-time university employees are covered by the Labour Relations Act (LRA). Secondary and elementary teachers bargain under the School Boards and Teachers Collective Negotiations Act[5], except occasional teachers, who are covered by the LRA. Both full-time and part-time support staff of Ontario's elementary and secondary schools are also covered under the Labour Relations Act.

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[4] Donald Carter and Marlene Cano, "Collective Bargaining Status of Part-Time Employees in Canada: The Implications for Ontario's Colleges," August 1987, p. 3.

[5] School Boards and Teachers Collective Negotiations Act, R.S.O. 1980, c. 464.

Carter and Cano conclude that the above examples *"suggest that there is no strong labour relations justification for excluding part-time employees from Ontario's college collective bargaining process"* and that this conclusion *"place(s) a very heavy onus upon those who would attempt to defend the present exclusion as a reasonable limit."* They conclude that compared to the treatment of part-time employees in most other colleges in other provincial jurisdictions, under other private and public sector legislative frameworks and, most importantly, in other educational sector settings, the exclusion of Ontario's part-time college employees is unusual, although it is not unique. Furthermore, they note that if those part-time employees happen to be predominantly women, there could be a case made for discrimination on the basis of sex.

The Commission received several briefs and a number of presentations concerning the status and working conditions of part-time and sessional employees. There were several 'horror stories' of multiple contracts separated by terminations, teachers who taught more than 35 hours per week, the termination of highly competent sessional instructors who had 'used-up' their maximum hours as a sessional to be replaced with another sessional, and so on. There was, however, virtually no concrete data available on the use, or possible abuse, of this type of employee other than anecdotal evidence of the kind just described.

College administrations presented the Commission with forecasts of dire consequences if the bargaining units were to be expanded. But, almost without exception, these dire consequences related to costs. **Not one single college, nor the Council of Regents, nor the Committee of Presidents, nor ACAATO presented any forecast of how many or what programs would be affected by** the certification of part-time staff. Nor was there any sense about whether such costs could be offset by increases in fees, grants, or other revenue increases.

The distinct impression that the Commission developed was that most people would be happy if the bargaining units were streamlined, on the condition that the government provide the necessary funding to cover the costs associated with the organization and bargaining for sessional academic employees and support staff. However, most college administrators expressed strong opposition to the concept that part-time teachers, those who teach six or less hours per week, could achieve pay and workload parity with full-time teachers. In programs such as design and graphic arts, for example, a local designer, who is prepared to teach one or two afternoons a week for $30 per teaching contact hour, would cost $80-100 per teaching contact hour under the current collective agreement salary, benefits and workload formula.[6] Such increases would almost certainly affect the viability of some programs, unless funding increased commensurately.

It is critical to recognize that this Commission has been totally unable to assess the impact of such major alterations of teaching costs on the Colleges. The costs can be crudely estimated and efforts have been made to do this in a subsequent chapter of this report. However, the impact on educational programs would require a highly detailed, college-by-college, program-by-program study and the data base to do this study does not currently exist.

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[6] This estimate was provided by one dean of continuing education who applied pro-rated salary, benefits, and attributed time to such a teaching assignment.

13.2.3 The Right to Organize

There are a number of arguments in favour of allowing part-time and sessional employees to participate in collective bargaining. The first is that the colleges, as leading educational institutions and as publicly funded organizations, have a responsibility to be a model employer. As the federal Commission of Inquiry into Part-Time Employment[7] noted, governments have a responsibility to set an example for the private sector. The days are gone when it could be assumed that part-time employees were working for ´pin money´; many, if not most, are working as a matter of economic necessity. Some are holding down two or more part-time jobs in order to achieve economic self-sufficiency.

As compelling and laudable as this approach is, it is important to recognize that it was framed in the context of improving the lot of poorly paid, often marginal members of the workforce. A highly paid professional, who teaches occasionally from a sense of service, pride, or even additional money, and who may be paid $20-40 an hour for teaching is an entirely different proposition. An argument based on ´equality´ can still be made for such people, but it lacks the moral force associated with the marginal workforce. The reality is that the part-time workforce in the colleges consists of both of these extremes and all ranges in between.

Two Charter arguments could also be advanced. One is that these employees are being denied ´freedom of association´.[8] The second, and more persuasive, argument is that because of the intersection of the Labour Relations Act, The Crown Employees Collective Bargaining Act, and the Colleges Collective Bargaining

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[7] "Part-time Work in Canada: Report of the Commissioner of Inquiry into Part-time Work" by Joan Wallace, Commissioner, 1983.

[8] Carter and Cano, p. 9.

Act, and a comparison with the Ontario educational and private sectors, these employees are being denied ′equality before and under the law′.

The third argument in favour of allowing bargaining rights to part-time and sessional employees is that exclusions from the bargaining units have been a source of continued and bitter arguments between these parties over the years and will continue to be so unless something is done about this situation.

There are several arguments against permitting part-time and sessional employees to engage in collective bargaining activities. These include the assertion that part-time employees don′t want to be organized. Such employees are often characterized as having full-time jobs elsewhere, retired, or self-employed. The assumption is made that they do not want to be union members. Somehow this assumption is translated into the proposition that it is therefore appropriate to deny them the right to express their desires through the certification process. At best this argument is paternalistic, at worst it is highly discriminatory.

The second, much more reasonable, argument is that certification would increase the cost of part-time labour. This is an economic argument that rests on the assumption that certification would lead to negotiations for part-time teaching and support staff which would raise salaries, lead to pro-rated benefits, and reduce the flexibility of utilization of such staff, since issues of workload and seniority would be negotiable. Much of this economic argument against permitting part-time employees to participate in collective bargaining appears to ignore the possibility of negotiating fair and reasonable collective agreements with such groups of employees which would provide acceptable labour costs and retain reasonable management flexibility. Given that many programs would have to be discontinued if costs increased substantially, reasonable people ought to be able to negotiate reasonable terms and conditions of employment.

13.2.4 Appropriate Bargaining Units

If part-time and sessional employees are permitted to organize, the issue of the appropriate bargaining unit(s) must be addressed. The guiding principle in establishing bargaining units is that of ´community of interest´. Broadly speaking, this calls for employees who have similar economic interests, similar terms and conditions of employment, and are employed in similar or related work, to be in the same bargaining unit.[9]

In designing bargaining units, there is a choice of the type of complexity one wants to try to manage. Bargaining units can be designed in two ways

- There could be a large number of small, homogeneous units, each consisting of a certain category of employees. For example, the could be one bargaining unit for full-time teaching masters; one for part-time teaching masters; one for partial-load; one for those teaching credit courses; one for continuing education; and so on. It would be relatively easy to negotiate collective agreements for each of these, but there would be many such sets of negotiations.
- There could be a small number of large, heterogeneous units, each consisting of many different categories and types of employees. For example, one bargaining unit could comprise full-time and part-time staff, trades and post-secondary teachers, counsellors and librarians, and so on. These units would be fewer in number, but it would be more complex to negotiate collective agreements covering all of the interests of all of the sub-groups within these types of bargaining units.

There are also several options for integrating the part-time and sessional employees´ bargaining units:

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[9] For an extensive discussion of bargaining units see: A.W.R. Carrothers, E.E. Palmer, and W.B. Rayner, Collective Bargaining Law in Canada, (Toronto: Butterworths, 1986) pp. 371-396.

- they could be placed in their respective support or academic bargaining units.
- they could be placed in different bargaining units, (i.e. sessionals, casuals, continuing education teachers and staff, or other classifications).
- they could be allowed to choose, by ballot, not only whether they want to be certified but whether they wish to be included in the existing bargaining unit or form separate bargaining units.

The prevailing practice of the Ontario Labour Relations Board is to have separate bargaining units for part-time and full-time staff. However, part-time staff who work regular hours, such as the seasonal employee who works full-time during a season, who might be equated to the colleges' sessional employee, are usually included in the full-time bargaining unit. Under the Crown Employees Collective Bargaining Act, part-time employees are included in the same bargaining unit as full-time employees.[10]

There are a number of arguments for the integration of part-time and sessional employees into the existing bargaining units. This approach would minimize fragmented bargaining and two sets of negotiations, one for academic staff and another for support staff, could cover all employees. There would, of course, need to be variations in terms and conditions of employment for part-time, sessional, casual, or other groups. Many part-time workers in the support staff group, as well as sessionals in the academic group, wish either to be full-time employees or have decided on a full-time commitment to part-time work. In this respect they have a common interest with the full-time employees in salaries, working conditions, seniority rights, and so on. Separate bargaining units would isolate the part-time employees into weak bargaining units which would leave them unable to improve their lot. Where the interests of full-time and part-time employees do differ, the union has the obligation to represent each set of interests fairly.

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[10] Crown Employees Collective Bargaining Act R.S.O. 1980, c. 108, s. 1 (f) vi and 1 (f) vii.

There are also strong arguments against the inclusion of part-time and full-time employees in the existing support and academic bargaining units. There is little community of interest between full-time teachers and certain groups of part-time employees, such as teachers who teach six or less hours per week in continuing education who might have full time jobs elsewhere, or students doing part-time work as teaching or administrative assistants. If the part-time employees were to be certified in the same bargaining unit as full-time employees, and they were perceived to threaten the security or earning power of full-timers, it would be difficult to expect equal representation by the union, despite any legal obligation for fair representation. Also, there are such large numbers of academic part-time employees in the system that they could, on a one-person/one-vote basis, assume very high influence within the full-time bargaining unit. This influence would be disproportionate to the amount of time that they were teaching and, possibly, to their commitment to the college. Placing part-time employees in the existing bargaining unit would increase the pressure to pro-rate existing terms and conditions of employment, which would severely impact college costs and flexibility. It would be quite difficult to develop terms and conditions appropriate to the realities of part-time employment given the benchmarks of full-time terms and conditions of employment within the same bargaining unit.

13.2.5 Organizing the Unorganized

A strong argument can be made that sessionals and part-time support staff should have the right to vote on their inclusion in a particular bargaining unit. Indeed, some would go further and suggest that OPSEU or some other union should be required to follow the general certification process. There are some advantages to having willing, consensual inclusion in a bargaining unit - this represents the maximum exercise of individuals´ rights. However, there is an established jurisprudence under the Ontario Labour Relations Board and the Crown Employees Labour Relations Tribunal dealing with whether inclusion is appropriate or not. In the interests of stability and certainty in the system it would be valuable to avoid an unnecessary organizing campaign.

13.2.6 Changing Bargaining Unit Composition

If new, more heterogeneous bargaining units are formed, this will require the negotiation of new terms and conditions of employment for employee groups who have hitherto been excluded from collective bargaining. This will not be easy, and a number of years of difficult negotiations may well ensue.

The Union has consistently taken the position in bargaining that ´a teacher is a teacher´ no matter what he or she teaches. This has been used, for example, to try to get workload formulae that apply to teachers whether they are teaching people English as a second language, how to mix cocktails, or diving. It is an untenable position when it is coupled with absolute rulings on teaching contact hours. It is also a position that has seriously concerned this Commission since the inclusion of groups such as sessional teachers and support staff employees who might be working on projects which are clearly not of a continuing nature in the existing bargaining unit, will increase the heterogeneity of those units. This will require the negotiation of differential terms and conditions of employment if many of those programs or projects are to be viable. This is, of course, antithetical to the position that ´a teacher is a teacher´.

One way of dealing with this would be to recommend a larger number of more homogenous bargaining units. That, however, would significantly fragment bargaining. The trade-off for having large bargaining units with many different types of employees teaching different types of programs, under differing conditions, is to have sensibly negotiated terms and conditions of employment suited to each group of people. It is hard to justify identical terms and conditions of employment for a full-time teacher who teaches classes in draughting on a year-round, year-in, year-out basis and someone else who is hired for a defined period of ten weeks to teach bricklaying for a course purchased with federal government funds on a ´one-off´ basis.

There are many examples of unusual work schedules. Seneca College provided three:

> OMDP: Semester and weekend workshop formats
>
> The Ontario Management Development Program consists of 30 hour courses, normally delivered 3 hours per week.
>
> We also offer selected courses in a weekend workshop as follows:
>
> 4 consecutive Saturdays - 9:00 a.m. - 4:00 p.m.
>
> or Saturday/Sunday over two weekends
> (Intensive 30 hours Residential Format)
>
> In other words, the alternative formats exceed 6 delivery hours per week but do not form a "regular" or semester based contract.
>
> Creative Writing (EAC 384)
>
> Creative Writing is offered in a traditional continuing education format of 12 sessions (3 hours each) over a 12 week period. In an attempt, however, to provide a more intensive workshoplike setting such as one might encounter at a writers´ retreat the Subject is also offered over a three weekend period. Students attend three Saturday/Sunday classes. Each session lasts six hours. (e.g. Saturday/Sunday - 6 sessions, 9:30 a.m. - 4:00 p.m.)
>
> Combined Responsibilities
>
> The third case illustrates employment of an individual for two assignments which, for a brief period of time, overlap and exceed 6 hours per week:

ASSIGNMENT 1 : Saturday 6 hour workshop

ASSIGNMENT 2 : 5 weeks, 3 hours per week

This point is emphasized because of the difficulties which may arise in making adjustments to the terms and conditions of employment for people who may be included in reconstructed bargaining units. Time would be required for data gathering on the utilization of these teachers and support staff before realistic terms and conditions of employment could be negotiated, or before the costs of those adjustments could be ascertained with any precision. Given reasonably good data and the preparedness of the government to provide the necessary funding, it should be possible for reasonable people to arrive at sensible terms and conditions of employment for the newly included employees.

If the parties were unable to bend their minds to this task there would be two options: allow them to fight it out through 'free' collective bargaining, or submit the dispute to binding arbitration. The first of these options would result in a period of instability and difficulty in bargaining which might take several successive sets of negotiations to resolve. The second option would lead to renewed dependence on third-parties, and would conflict with the goal of having the parties feel a sense of ownership in the agreement that they negotiate.

13.2.7 The Need for Flexibility

The educational mission of the colleges requires that they be flexible institutions. They must be responsive to the rapidly changing needs of industry, commerce, and public sector employers. This means that they must generate new programs, change established ones, and retire old ones very quickly. They must often staff and discontinue programs on very short notice and must offer programs when and where the students want them.

John Dennison´s study[11] pointed out that this need for flexibility inevitably causes problems in employee relations in the colleges since it is diametrically opposed to employees´ desire for security of tenure and wish to have their work arranged for their own convenience. This is a natural tension and will need to be managed through the process of collective bargaining. The conflict between the colleges´ need for flexibility and the employees desires for security and control will never go away and will never be ´resolved´ to everyone´s satisfaction.

13.2.8 The Market Realities

It is also clear that the colleges operate in some highly competitive markets. In many clerical courses, such as word-processing, they are competing directly with commercial training operations; the federal government appears to be changing its training subsidization policies in favour of grants directly to employers so that they can purchase training units on the open market, rather than paying for the colleges to do training; even within Ontario, the Ministry of Skills Development positions itself as a ´customer´ of the colleges rather than its funding agent.

The implications of competition are obvious. If the costs of offering certain programs price them out of the market, then either the government will have to subsidize them or they will no longer be viable. If the government starts extensive subsidization of courses which are available through private suppliers at comparable quality and lower costs, then the taxpayers have the right to ask some tough questions about how their money is being spent.

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[11] John Dennison, "Collective Bargaining in Canada´s Community Colleges: An Analysis", 1987, pp. 87-88.

13.2.9 Other Exclusions from the Bargaining Unit

Schedules 1 and 2 of the CCBA exclude a large number of people from the bargaining units who are in clerical capacities, handling ´confidential´ data with respect to budgets but not, apparently, the type of information which could be of use in collective bargaining. Such exclusions are not really warranted. More restrictive exclusions are more in keeping with the general practice of the LRA and other pieces of provincial and federal labour legislation. Only people with managerial duties and those who have access to confidential information which is central to collective bargaining or personnel matters should be excluded from the bargaining units.

Unlike the universities, department heads and chairs in the colleges are excluded from the academic bargaining units. There is a strong argument to be made that the inclusion of these lower-level academic administrators would promote a level of collegiality within the college system. Furthermore, exclusion from the bargaining unit means that it is quite difficult to rotate a department head or chair back to the teaching faculty. This tends to result in a permanent core of administrators, many of whom are remote from teaching. It also blocks opportunities for others who might like to try academic administration but do not wish to leave the bargaining unit.

In consultations with the colleges, there was an extremely negative response to suggestions that department heads and chairs be included in the bargaining units. Their belief was that, in the college system, such people performed managerial functions including hiring and terminating, substantive performance appraisals, and the delegation of work and teaching schedules.

13.3 RECOMMENDATIONS

In the discussions about appropriate bargaining units, there is often some confusion about two very different issues. The first is social justice - the right of employees to participate in the collective bargaining process. The second is the potential cost if categories of excluded employees are permitted to organize and if some bargaining agent manages to negotiate terms and conditions of employment which are significantly better than these employees currently experience. Both of these are important, but they are distinct issues.

Because a group of employees is declared eligible to participate in the collective bargaining process, it does not mean that it will inevitably become certified. Furthermore, if the employees become certified, they may not be in the same bargaining unit as other employees. And beyond that, there is no reason that they should have similar terms and conditions of employment although there will, of course, be strong bargaining pressures to ensure that they do.

In addressing the issue of part-time and sessional employees, the objectives are:

- to ensure that the colleges pursue employment practices which are consistent with the standards expected of an ´exemplary employer´;
- to ensure that the Colleges Collective Bargaining Act is consistent with the Charter of Rights and Freedoms in respect to the treatment of part-time and sessional employees;
- to ensure that the colleges retain the flexibility to employ part-time staff and staff who may teach on a regular or occasional basis in continuing education courses;
- to ensure that the colleges can negotiate collective agreements in a way that is consistent with operating in a competitive environment;
- to ensure that collective bargaining is not unduly fragmented by the creation of multiple bargaining units.

There are, quite clearly, certain groups of staff for whom terms and conditions of employment should vary from those of other groups. It is the Commission's view that the proper way to address this is through the negotiation of different terms and conditions of employment for such groups and not by denying them the right of union representation.

To achieve these objectives, the following specific recommendations are made:

Recommendation #24*

Allow all employees collective bargaining rights under the CCBA with the exception of those who:

- **exercise managerial functions;**
- **are employed in a confidential capacity in matters relating to collective bargaining;**
- **are students at a college working at a placement under a co-operative program;**
- **are members of professions which do not permit unionization (architecture, medicine, dentistry, engineering, and law) if they are employed in the colleges in their professional capacities;**
- **are engaged and employed outside Ontario;**
- **are graduates of colleges of applied arts and technology during the period of twelve (12) months immediately following completion of a course of study at the college by the graduate if the employment of the graduate is associated with a certification, registration or other licensing requirement.**

Recommendation #25*

Restructure the bargaining units defined in Schedules 1 and 2 of the CCBA to read as follows:

A1. Teachers, counsellors, and librarians who usually teach more than six (6) hours per week except supply teachers.

A2. Teachers, counsellors and librarians who usually teach six (6) or less hours per week and supply teachers.

S1. Support staff who usually work more than seven (7) hours per week.
S2. Support staff who usually work seven (7) or less hours per week.

Recommendation #26*

The current bargaining agent should continue as the designated bargaining agent for the A1 and S1 bargaining units. While the A2 and S2 bargaining units should have the right to bargain collectively, any employee organization wishing to represent them should have to apply for certification and such certification should only be granted on a province wide basis based on a ´double majority´ process.

Recommendation #27*

Allow OPSEU and CERA a period of twelve (12) months from the date of proclamation of amendments to the CCBA to negotiate terms and conditions of employment for the various categories of employees who will be accorded bargaining and representation rights. If they are unable to reach agreement, the terms and conditions of employment should be referred to binding arbitration.

This period of twelve (12) months should be adjusted depending on the date of proclamation of legislative amendments so that the resolution of this matter precedes the negotiation of a new collective agreement.

These may be costly recommendations. The costs will depend on two outcomes: (a) the actual terms and conditions of employment which are negotiated or established by arbitration for the new groups of ´included´ employees; and (b) whether a union is successful in organizing the A2 and S2 bargaining units, and the terms and conditions of employment which are negotiated for employees in those units. It is also possible that the threat of certification might put upward cost pressure on the pay for non-certified part-time academic and support staff. While these costs are discussed further, below, they will likely inflate the labour costs of the colleges by about 5 to 8 percent over the next few years as part-time support staff and sessional academic employees seek to achieve pro-rated equality with full-time employees in salaries, benefits, and working conditions. Unless the government is prepared to make additional funds available or allow the colleges to increase fee revenue, this will result in the cancellation of programs and/or restriction of support services.

13.4 BASIS OF RECOMMENDATIONS

13.4.1 The Organization Issues

The Right to Organize

The colleges, as leading educational institutions and as publicly funded organizations, have a responsibility to be model employers. They must recognize the changing social conditions regarding part-time employment, and acknowledge that part-timers are vulnerable unless they have some form of collective representation, particularly when there is a union actively working to protect the rights and security of full-time employees. Disqualifying them from seeking the certification option is simply to perpetuate this disadvantage. The CCBA must also be brought into conformity with the Charter of Rights and Freedoms. Finally, the extension of bargaining rights to less-than-full-time employees may relieve some of the tension between the parties which has surrounded previous discussions of bargaining unit job security.

Appropriate Bargaining Units

The Commission has concluded, on the basis of the briefs and presentations made to the Commission during its consultative process, that there is a strong community of interest between the sessional academic staff and full-time and partial-load staff who are currently in the academic bargaining unit. Further, the

Commission believes that these sessionals would welcome representation by the current bargaining agent. Therefore, the recommendation is made to include the sessionals in the existing academic bargaining unit.

However, the part-time academic staff, those who teach six hours or less a week, do not have the same community of interest. Nor is the Commission convinced that this group wants union representation or wants the current bargaining agent to represent it. Therefore, the recommendation is for separate bargaining units for part-time academic employees and the remainder of the academic employees. Furthermore, any union must seek representation rights through the certification process.

With respect to the support staff, there appears to be a community of interest between part-time support staff and the full-time staff; the Commission sees little value in fragmenting bargaining by creating two separate bargaining units. However, there are some support staff who are truly occasional or casual employees including, for example, those who might work regularly or occasionally for less than one day a week. These might include laboratory assistants, students who hand out basketballs in the gymnasium, and others. They have a different community of interest than those with stronger attachment and dependence on the college for their livelihood and there is little evidence that this group wants union representation. Therefore, separate bargaining units are recommended and, again, a union seeking representation rights must seek them though the certification process.

In the wording of the recommendations for the bargaining units the word 'usually' is used to describe the inclusions in each of the bargaining units. This is essential to deal with certain situations which can arise. For example, a continuing education teacher may teach a course over a ten-week period. This may consist of twelve evening sessions, each lasting two hours, and a full day of teaching on one Saturday. This teacher should properly be in the A2 bargaining unit and not in the A1 unit just because he or she happens to teach more than six hours on one particular day. A support-staff member might be hired for a very short period - one or two days, for example. Or someone who would normally be covered by the S2 unit might be asked or request to work for a couple of days in one single week. The intent is that such an employee should not become a member of the S1 bargaining unit because they work **occasionally** for more than seven hours in a specific week. They have a greater community of interest with the S2 group.

It must be noted that the Commission has **not** chosen to recommend the language of the Crown Employees Collective Bargaining Act which uses the language ´regular and continuing´ to describe certain groupings of employees in the bargaining units. The word ´continuing´ is too problematical since it offers the opportunity for managements to employ people for long periods of time and then to break the continuity by terminating contracts, only to rehire them shortly after. Seasonal employees would, for example, probably not qualify as ´regular and continuing´ but would qualify for inclusion in the S1 bargaining unit described above.

The word ´regular´ is not totally without problems itself since it begs the question of what ´regular´ work is. Indeed, **any** word that is used to qualify employment offers the potential for some abuse - including the word ´usually´ which has been utilized here. The colleges must use the qualification of ´usually´ sparingly in assigning people into the unorganized A2 and S2 categories if they are to avoid severe conflict with the unions. By far and away the best approach to this is to pay such employees strictly on a pro-rated basis, including an allowance for benefits, while they are working more than their six or seven hours per week even if they are not being paid this way during the other time they are employed.

There is nothing in these descriptions of the bargaining units to prevent the colleges hiring individuals for short seminars on a fee-for-service basis or, indeed, from engaging in ′purchase-order teaching′ by contracting with an individual or company who is not **an employee** of the college. However, the point must be made that excessive contracting out of work would be a recipe for disaster in employee relations. It would be bound to provoke a strong push by the unions to include restrictive contracting-out language in the collective agreement.

The Exclusion Points

There is nothing sacred about the choice of ′6 hours or less′ for academic staff and ′more than seven hours′ for the support staff. These have been chosen on judgment following consultations with the parties as approximations of the point at which attachment to the college becomes more significant.

Organizing the Unorganized

The Commission has recommended that sessional academic employees and part-time support staff (who usually work more than seven hours per week) automatically be added to the existing bargaining units, without having the right to vote to determine their inclusion or exclusion. Although this recommendation restricts the maximum exercise of individuals′ rights, the result is, in the Commission′s view, a foregone conclusion, because of precedents set by the Ontario Labour Relations Board and the Crown Employees Labour Relations Tribunal.

This Commission is not a judicial body and could be subject to criticism for taking this function to itself. In the interests of stability and certainty in the system it would be valuable to avoid an unnecessary organizing campaign and therefore the Commission has recommended automatic inclusion of these groups within the bargaining units. However, the passage of legislation which drafted such employees into bargaining units may provoke a challenge under the Charter of Rights and Freedoms and this might stall the implementation of this recommendation.

Province-Wide Certification

While requiring certification of the A2 and S2 bargaining units to be on a province-wide basis will make it very difficult for a union to organize them, it is consistent with the province-wide nature of collective bargaining currently in the college system and the recommendations in this report to continue this system. To allow local certification of such groups would result in excessive fragmentation and high costs for certification fights and negotiations for both union(s) and the colleges.

Other Exclusions from the Bargaining Unit

The duties of department heads and chairs vary from one college to another. The best way to handle it is to phrase the exclusion in terms of managerial duties rather than the specification of certain positions. In one college the department heads may not have managerial duties and, in such cases, there is no purpose to their exclusion. In another they might. In any event, disputes about inclusions and exclusions may best be resolved by the parties themselves or, failing that, there is recourse to the agency responsible for certification for appropriate rulings.

The recommendation to exclude co-operative program students is based on the necessary linkage between educational requirements and employment costs. There are less than 70 of these students in the colleges at the present time and they cannot be said to represent a realistic threat to the security of full-time or regular part-time staff. Any increase in the costs of employment of such students might interfere with the development of these very worthwhile programs.

On the other hand, the recommendations do not exclude students other than those in co-operative programs. The vast number of such students would provide the colleges with the means to severely undercut the terms and conditions of support staff.

Bargaining Units and the Deemed Strike Provision

If the part-time and sessional employees are included in the same bargaining unit as full-time employees, it would be more difficult for the colleges to operate in the event of a strike. This stems directly from the ′deemed strike′ provision in s.59(2) of the CCBA. Currently, their exclusion from collective bargaining rights would allow various functions to the staffed by sessional academic staff and part-time support staff. Consultations with the parties indicate that this would not be a practical problem since the colleges would be highly unlikely to attempt to operate using these categories of staff.

13.4.2 The Impact of Inclusions on Collective Bargaining

If these recommendations are adopted, new, more heterogeneous bargaining units will come into existence and the negotiation of new terms and conditions of employment for previously excluded employee groups will be difficult. The Commission has recommended that failure by the parties to negotiate such terms and conditions of appointment should result in compulsory arbitration. This is, of course, a high risk for the colleges and the government since there are very significant costs associated with the adjustment of terms and conditions of employment of these employees, particularly the sessionals. Cost simulations prepared by the Staff Relations Division of MCU, and included in Appendices VII and VIII of this report, indicate an exposure as follows:

- To pay sessional teachers an hourly rate equivalent to the rate paid to full-time teaching masters would add $2 million to employment costs.
- To pay sessionals for professional development and benefits, in addition to the equivalent salary, would add an additional $6 million to employment costs.

- To pro-rate salaries and benefits to part-time support staff who work more than seven hours per week could add between $5 and $15 million to employment costs depending on various assumptions.

If the resolution of these issues does go to arbitration, the government would be exposed to large potential costs and these cannot be predicted with any degree of certainty.

The A2 and S2 bargaining units **may** be organized if OPSEU or another unit is successful in a certification drive. Under such circumstances, the colleges would have to negotiate terms and conditions of employment for these part-time academic and support staff.

Particularly on the academic side, the costs associated with pro-rating pay and benefits for those who usually teach six or less hours per week are very difficult to estimate since the type of work they do may approximate the full-time or partial-load teachers (with student evaluations, consultations and counselling, for example) or may be totally different, involving classroom instruction only. Currently, the province pays $40 million to such teachers in salaries. If they were to be paid at the same rate per hour as the full-time teaching master, making allowances for the different duties involved, the estimate is that this amount would jump to $69 million ... an increase of $29 million. If they were also to receive benefits and professional development time, the costs would escalate from $40 million to $80 million.

There are some individuals who are full-time teaching masters but who also teach in continuing education programs, often for far less money (on an hourly basis) than they make in their normal teaching duties. Such teachers would be, according to the definitions of the bargaining units recommended, in the A1 bargaining units. Whatever they were to be paid while

´moonlighting´ in continuing education programs would depend on their collective agreement.[12]

It may well be that OPSEU or some other union is successful in organizing the staff in the A2 and S2 bargaining units. If they are, tough bargaining might well result and the cost implications are, as described above, quite profound. If they were to strive for greatly increased remuneration, the whole cost-structure of continuing and part-time education might change and many programs would no longer be viable. However, the simulation of that whole question is well beyond the mandate and the resources of this commission. It would, in any case, be extended over several years.

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[12] A person who taught full-time in one college and part-time in another college could be a member of both the A1 and A2 bargaining units. This is because it is the college which remains the employer of the individual.

14

BARGAINING PROCESS

Many exasperated observers of the mechanics of collective bargaining in the academic bargaining unit have commented on the protracted, and frequently acrimonious negotiations which have characterized the history of collective bargaining in that unit. To take an average of 8.6 months **after the previous collective agreement has expired** to negotiate a new agreement is, quite simply, excessive.

Not all the blame for this can be laid at the feet of the bargaining process. The same process is used by the support staff bargaining unit and, in many ways, those negotiations have been a model of responsible public sector collective bargaining. The issues have been more complex in the academic bargaining unit and the personalities have been different. Nevertheless, many critics of the colleges' collective bargaining process believe that there are ways in which the legislative framework of bargaining could be modified to remove impediments to bargaining.

This chapter of the report deals with the negotiations process. It addresses the impact on the conduct of collective bargaining of:

- the existing timelines in the CCBA[1];
- dispute resolution mechanisms, including fact finding, mediation, and arbitration;
- the exercise of sanctions, including strikes and lock-outs

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[1] Colleges Collective Bargaining Act, R.S.O. 1980, c. 74.

14.1 CURRENT STATUS

The Colleges Collective Bargaining Act establishes a rigid regime for bargaining:

- collective agreements terminate on August 31 of the year in which they are due to expire;
- notice to bargain must be given by January 31 of the year in which agreements are due to expire;
- the parties must meet within 30 days of notice to bargain being given and then must ´negotiate in good faith´;
- fact finding is compulsory if the parties have been unable to reach a collective agreement by the time the contract has expired although the parties may request fact finding by mutual consent at an earlier date;
- prior to taking strike action, the union must hold supervised votes on ´a last offer received´ from management and a strike;
- the Colleges Relations Commission may appoint a mediator at the request of the parties or when it feels an appointment is appropriate;
- the College Relations Commission may declare, during a strike or lock-out, that the students´ year is in jeopardy.

14.2 DISCUSSION

14.2.1 Dispute Resolution Mechanisms

The three legislative frameworks that have governed colleges collective bargaining - the Public Service Act (1968-72)[2], The Crown Employees Collective Bargaining Act (1972-75)[3] and the Colleges Collective Bargaining Act (1975 to present) - have each contained provisions for both binding and non-binding dispute resolution mechanisms. The CCBA has more such resolution mechanisms than most pieces of legislation in Canada, or the United States, in that it provides for fact finding, mediation, arbitration, and final offer selection.

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[2] Public Service Act, 1961-62, c. 121.

[3] An Act to Provide for Collective Bargaining for Crown Employees, 1972, c. 67.

Since 1968, the bargaining parties have utilized the full range of dispute resolution mechanisms available to them, most notably in the academic unit negotiations. Figure 14.1 summarizes this use of dispute resolution mechanisms in the twenty-four sets of negotiations which have taken place since the creation of the colleges.

Fact Finding

Fact finding is a form of non-binding dispute resolution whereby a disinterested, neutral third party inquires into the bargaining parties' negotiations and writes a report on matters agreed upon and those remaining in dispute. In the report, the fact finder may make recommendations on disputed matters. These recommendations may serve as the basis for a settlement, but are not binding on the parties.

There are three basic ideas behind fact finding. The first is that the parties may benefit from an experienced professional helping them to structure the issues in bargaining and bring relevant data to bear on those issues in dispute. The second idea is that the threat of publicly revealing extreme negotiating positions taken by either or both of the parties in negotiations may act as an incentive for them to be reasonable in the approach that they take. The third idea is that the public has a right to know what is going on in public sector disputes and that the fact finder could be the public's 'window' on negotiations.

Fact finding has occurred in all 24 rounds of negotiations, including the academic 1980/81 wage reopener round during the term of the 1979/81 collective agreement. However, its effectiveness has been very seriously questioned by external observers, the parties themselves, and the fact finders who have

FIGURE 14.1

Dispute Resolution Mechanism Usage in the Colleges, 1968-87

	ACADEMIC					SUPPORT STAFF			
	Fact Find.	Mediation	Arbitration	Legislation		Fact Find.	Mediation	Arbitration	Legislation
Round 1(71-73)	N/A	x	x		(68-70)	N/A	ND		
2(73-75)	N/A	x	x		(70-72)	N/A	x	x	
3(75-76)	N/A	ND	ND		(72-74)	N/A	x	x	
4(76-77)	x	x			(74-76)	N/A	ND	ND	
5(77-79)	x	x			(76-77)	x			
6(79-81)	x	x			(77-78)	x			
7(80-81)*	x*	x	x*		(78-79)	x	x		
8(81-82)	x	x			(79-81)	x	x		
9(82-84)	x	x			(81-82)	x	x		
10(84-85)	x	x	x	x	(82-84)	x	x		
11(85-87)	x	x			(84-85)	x	x		
12(85-87)	x	x			(85-87)	x	x		
13(87-?)	x	x			(87-89)	x	x		

Legend

N/A Not applicable

ND No data

* as per the parties' 1979-81 agreement to re-open the agreement for negotiation purposes concerning the 1980-81 remunerative matters.

Source: This figure was presented in Joseph Rose's report: "Interest Dispute Resolution in Ontario's Community Colleges", 1987.

been involved in the process. Joseph Rose, a researcher for the Commission, reached the following conclusions:[4]

> *"The effectiveness of dispute settlement procedures also varied between bargaining units. Fact finding was regarded as little more than a legislative hurdle in support staff bargaining. As a result, fact finders were persuaded that negotiations should be allowed to continue without being encumbered by reports including recommendations. In contrast, fact finding in the academic staff unit normally resulted in reports containing recommendations. Fact finder reports assumed the role of advisory arbitration in these talks and were intended to provide the basis for a negotiated settlement."*

Graeme McKechnie, an experienced fact finder in college negotiations reports:[5]

> *"This writer has been a Fact Finder on three separate occasions within the support staff bargaining unit and a review of the fact finding reports written by this author as well as the other three Fact Finders, demonstrates remarkable similarities. In each and every case, the Fact Finders either directly or by inference, refer to the fact that no impasse was reached prior to the Fact Finder's appointment. In some cases, reference is made either to statements by the parties or attitudes by the parties that they really did not anticipate any benefit from the fact finding process and took part in the process because they knew that it was required by the legislation. As a result, one conclusion to be drawn is that at least on the support staff side, the parties do not see Bill 108 [the CCBA] as providing any great benefit. Indeed it is seen as slowing down the process since the Fact Finder is not treated as a conciliator under Ontario Labour Relations Act in which the conciliator might attempt what could be described as mediation for a day or slightly longer and failing an agreement, issue a no-board report.*
>
> *"The fact finding process, by legislation, must result in the production of a report and to the support staff, it is not unreasonable to conclude, that they see this*

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[4] Joseph B. Rose, "Interest Dispute Resolution in Ontario's Community Colleges", p. 64.

[5] Graeme H. McKechnie, "Report to Colleges Collective Bargaining Commission", October, 1987, pp. 25-26.

report as a slowing-down of the process rather than an assistance to the parties. Indeed, a reading of the six fact finding reports that have been produced within the support staff unit could lead to the conclusion that the third party issued a no-board report in the sense that although the issues are laid out and the positions taken by each side noted, invariably the concluding sentence reads: "no recommendation is made on this issue", or that: "the parties have made very little progress on this issue and the Fact Finder does not believe that any recommendation would assist them". The old adage, one can lead a horse to water, but one cannot make it drink, typifies the experience under Bill 108 with respect to fact finding in the support staff.

"Although the parties go through the process, they are not using the process and although one may argue that the legislation requires them to use fact finding, the parties have successfully, albeit with the agreement of the Fact Finders themselves, used the process as a mini-conciliation or at least a one day hiatus in collective bargaining. As a result, it is not unreasonable to state that the support staff opinion of the fact finding process is such that the parties themselves do not see much difference between their relationship and the relationship of any other office and clerical bargaining unit with the Council of Regents.

"In the matter of the academic staff ..., the Fact Finder in 1981 and 1982 recommended a change in the structure of collective bargaining to ease the frustrations felt by most third parties when they entered the academic bargaining situations. The parties themselves approach the process differently than in the case of the support staff. As already noted, the support staff find Bill 108 somewhat uncomfortable in the sense that it imposes a procedure of third party intervention which the parties themselves would clearly not have chosen had it been left to them. On the academic side, the question is not so much discomfort with a framework imposed by the legislation, rather, there is frustration with the individuals on each side of the table with respect to the composition of the opposing bargaining team... In part, this leads to a lack of efficiency in the bargaining process and may indeed signal why neutral intervention has not been greeted with great enthusiasm.

"In the academic staff bargaining unit, it is the process itself which has been violated, rather than a feeling that fact finding, per se, causes some

> *difficulties or perhaps more accurately, is not fully accepted because it is not particularly familiar to the parties.... I also recognize that the academic staff approach to third party assistance has often been to subvert the process in order to maintain their own particular set of timing objectives. It would be better to change the way the parties must follow the process, rather than subvert fact finding in a field which has a public impact, even though less than in the elementary and secondary schools."*

The effectiveness of fact finding is not easy to determine. Joseph Rose's data, for example, indicate that on only three of eight occasions (1976/77, 1977/78, 1979/80) have support staff negotiations produced a settlement prior to the public release of the fact finder's report. Moreover on only one occasion (1976/77) in the eight rounds of academic negotiations under the CCBA has a settlement been achieved prior to the public release of the fact finder's report. It would appear that one of the ideas behind fact finding, that the threat of public exposure of both positions would result in convergence of positions, is not borne out by the historical record.

The fact that settlements have not tended to be reached before release of the fact finder's report could also be due to the timing of the mechanism, which becomes compulsory if the parties have not resolved their differences by the agreement expiry date. Therefore, appointments after that date could be attributed, in large part, to legislative requirements rather than any desire of the parties to go through the process. Further, the timing of fact finding may be inappropriate to the extent that the parties have not been at an impasse, and therefore they do not need assistance. Indeed, this hypothesis is supported by the consistency with which support staff fact finders have declined to make recommendations on matters in dispute for fear that these would be dysfunctional to the parties' use of the negotiation process to resolve their differences.

Fact finders in the academic staff negotiations have also commented that they have tended to be involved at early stages of negotiations rather than at the stage when an impasse had been reached[6]. They have often been documenting the parties' initial positions rather then their final ones. In addition, linking fact finding to agreement expiry has caused the union negotiators to view the process as futile, and as a legislative condition or procedural hurdle, which must be jumped before the union can hold a strike vote.

In summary, fact finding has been ineffective in the college system. Since it has taken place before negotiations have reached a stage of impasse, the fact finders have been unable to assist unwilling parties to structure the real issues in dispute. It is quite clear that the threat of exposure to public scrutiny has not deterred the parties from sticking to their positions. Finally, since fact finding has taken place at early stages of negotiations, the public has not been informed of the real issues in dispute and the realistic probability of strike action.

One potential improvement in fact finding would be to position it late in the collective bargaining process rather than early. Such a positioning would make it impractical for the parties to stall collective bargaining until after fact finding takes place since they would have insufficient time to negotiate. Intransigence or intractable positions late in the bargaining process would be more likely to attract criticism from the public and the college communities than such positions taken early in the process. The discretionary use of fact finding would also tend to discourage the parties from stalling bargaining since they could count on the fact finding step actually taking place. This model of late fact finding would make the process similar to conciliation, a process used in very high profile public sector disputes under the Canada Labour Code[7].

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[6] Kennedy, McKechnie, Springate and Swimmer as support unit fact finders, and Downie, Gandz and Whitehead as academic unit fact finders addressed this issue.

Mediation

Mediation is a form of non-binding dispute resolution whereby an individual or panel, acting as (a) disinterested neutral(s), attempt(s) to effect a settlement of matters in dispute between the parties. Mediators have no formal authority to bind the parties to a settlement.

Mediation has been used in 18 of the 24 rounds of negotiations that have occurred since 1968, under the PSA, CECBA and CCBA. Information is not available to indicate whether mediation was used in the 1975/76 academic negotiations and the 1968/70 and 1974/76 support staff bargaining rounds.

The CCBA requires that mediators be appointed to negotiations once bargaining has extended beyond the date of expiry of the contract although they may be requested to participate at earlier stages. Mediators know, however, that they can only be of value when the parties have made up their minds that they **want** to settle. The skilled mediator may enter the dispute and then exit it quickly, until such time as the parties appear ready to begin serious bargaining. It is at the point where the parties are genuinely at loggerheads that the mediator can get to work. It becomes almost impossible, therefore, to assess how useful mediation is since it almost always occurs and there is always a settlement - sooner or later.

Arbitration

Arbitration, unlike either fact finding or mediation, is a **binding** dispute resolution procedure. Use of this mechanism involves (a) disinterested neutral(s) whose participation in the negotiations result(s) in decisions which are binding and then form part of the collective agreement. Moreover, ´interest´ arbitration to impose a new collective agreement, as outlined above, is different from ´rights´ arbitration[8] which occurs as the final stage of the parties´ grievance procedure.

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[7] Canada Labour Code, R.S.C. 1970, c.L-1.

The availability of interest arbitration to the bargaining parties has differed between the PSA and CECBA on the one hand, and the CCBA on the other. Under the provisions of the PSA and CECBA, either party could request that arbitration be employed to establish disputed terms and conditions of employment. Under the CCBA, however, interest arbitration (in either its conventional or final offer selection form) can only be used on the joint request of both parties. This change, from unilateral decision-making to bilateral agreement, was necessary because strikes and lock-outs were prohibited under the PSA and CECBA, but are allowed under the provisions of the CCBA.[9]

In the first seven rounds of negotiations (which occurred under the PSA and CECBA), three rounds ended through the use of interest arbitration. Under the CCBA, interest arbitration has been used twice, on both occasions in the academic negotiations, in 1980/81 and in 1984/85. In 1980/81, interest arbitration was jointly agreed to by the parties as the preferred means to resolve negotiations for the 1979/81 reopened agreement over the second year remunerative matters. In 1984/85, interest arbitration was imposed upon the parties as a provision in the back-to-work legislation which put an end to the academic unit strike.

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[8] The usage of rights arbitration is discussed in Chapter 12 - "Employee Relations in the Colleges".

[9] Interest arbitration is also usually ordered by a government as a way to end prolonged strikes in the public sector.

The inevitable public reaction to a strike or lock-out in a public sector dispute is to call for the prohibition of strikes in legislation and the substitution of interest arbitration. To address the relative merits of interest arbitration versus the right to strike in any depth would require a separate commission which would just deal with that issue! Furthermore, it has been dealt with many times before in the vast literature on industrial relations[10] both in its conventional form and more exotic variants such as final offer selection[11].

The conclusion is that while arbitration may be a satisfactory mechanism for dealing with issues such as wages and benefits, in that the outcomes tend to approximate the outcomes of free collective bargaining over the long term, interest arbitration is no substitute for bargaining over more complex issues such as workload formulae, job classifications, and other aspects of working conditions. The parties tend to freeze into positions, waiting for the arbitrator to decide the issue. Conflicts get regulated through arbitration, but they remain unresolved. The parties in collective bargaining in the colleges have no real wish to see a regime of interest arbitration instead of collective bargaining and this Commission does not think that such an approach would be good for the college system's long-term health.

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[10] B.M. Downie, The Behavioural, Economic, and Institutional Effects of Compulsory Interest Arbitration (Ottawa: Economic Council of Canada, December 1979); C.M. Stevens, "Is Compulsory Arbitration Compatible With Bargaining?" Industrial Relations, Vol. 5, No. 2, (February 1966), pp. 38-52; T.A. Kochan, "Dispute Resolution Procedures" in Collective Bargaining and Industrial Relations (New York, N.Y.: Irwin, 1980).

[11] W.W. Notz and F.A. Starke, "Final Offer Versus Conventional Arbitration as Means of Conflict Management", Administrative Science Quarterly, Vol. 23 (June 1978), pp. 189-203; P. Feuille "Final Offer Arbitration and the Chilling Effect", Industrial Relations, Vol. 13, No. 3, (Oct. 1975), pp. 302-310.

14.2.2 Timelines in Collective Bargaining

The CCBA specifies rigid timelines for contract expiry, notice to bargain, the appointment of fact finders, and other matters such as the taking of strike and last offer votes.

Contract Expiry Date

Apparently, the only reason that there is a provision in the Act for collective agreements to expire on August 31 is because of its companion status to the School Boards and Teachers Collective Negotiations Act (SBTCNA)[12]. In that Act the August 31 date is not unreasonable in that the public education school year commences, for all practical purposes, on September 1. In the colleges, however, only certain programs are semestered to commence on or around September 1. Cooperative education programs, government-sponsored training programs, and a host of other services are offered without regard to the traditional public education and university academic calendar cycles. Since the academic calendar in the colleges is not tied to the August 31 date, there is little persuasive argument in favour of retaining this date for the colleges. The parties should be able to choose a date which has more ´pressure to settle´ associated with it and which would reduce the time between giving notice to bargain and getting down to serious negotiations.

Negotiation Period

The data on each round of negotiations reveals that the parties have settled their differences, in virtually every instance[13], only after the previous agreement has expired. While the precise time for commencement of negotiations under the Public Service Act is not known, serving of notice to negotiate the collective agreement was required three to four months prior to the expiry date under the provisions of CECBA, and nine months before the stipulated expiry date of August 31 under the CCBA. At the very least, it would appear that the nine-month period for negotiations as provided for in the CCBA is unnecessarily long and detracts from any sense of urgency which might be associated with a shorter negotiation schedule.

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[12] School Boards and Teachers Collective Negotiations Act, R.S.O. 1980, c. 464.

[13] On two occasions, 1985/87 and 1987/89, the support staff have reached agreement before the previous agreement expired, while the academic unit has had one tentative agreement, 1981/82, before the previous agreement expired.

The Timing of Sanctions

Currently, the parties´ ability to strike or lock-out is dependent upon a number of factors. A strike cannot occur unless the previous agreement has expired; a minimum of 15 days have past since the fact finder´s report was made public (a minimum of 45 days after the appointment of a fact finder); the bargaining unit members have rejected the last offer received from the Council of Regents; the members have voted ´In Favour´ in a strike vote; at least five days have passed between a vote in favour of strike and the union serving notice to the Council as to when the strike will commence.

A lock-out cannot occur unless the previous agreement has expired; at least 30 days have passed since the fact finder´s report was given to each party; and five days notice of the date of lock-out has been served by the Council of Regents on behalf of the employers to the union.

The cumulative impact of the Act´s sanction provisions is to put a great time distance between the activities that are necessary conditions for a strike or lock-out, and their actual occurrence. In particular, for the union to go on strike, both a last offer received and strike vote must be taken. Moreover, a last offer received vote must precede a strike vote or be held on the same day. Further, a strike vote can take place no earlier than the public release of the fact finder´s report. Such extended time periods tend to minimize the probability of the strike or lock-out. The votes become mere procedural formalities because everyone assumes that there is lots more time for real negotiations to take place.

Aside from the distancing between the act of sanction and its necessary precursors, there are other problems associated with the timing of sanctions. The decision to hold a last offer received vote rests with the union. However, the timing of the vote is not tied to any other event; the union can call for a last offer received vote at any time during the negotiations. Moreover, it should be noted that under the provisions of the SBTCNA, the teachers' union votes on the school board's final offer and not simply the last offer received. In the colleges the union can call for a vote on an offer which conceivably would not represent the Council of Regent's final offer, but its proposals or positions at the particular point in time that the union chooses to call the vote. This offer could represent anything from initial positions to genuine bottom lines. If the vote is called early in negotiations, the union portrays the early last offer received as an insult and whips up militance as a result. In effect, there is no opportunity for the membership to vote on a true, final offer and, as Table 14.1 clearly shows, it is routinely rejected by a wide margin. Indeed, there is evidence that this particular union sees the last offer received vote as no more than another procedural hurdle to be jumped and that this is even more apparent when recent votes are considered.[14]

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[14] CAAT Academic Bulletin Sept. 1987.

TABLE 14.1

LAST OFFER VOTE OUTCOMES

(In Percentages)*

			1979/1980		1981/1982		1982/1984		1984/1985		1985/1987		1987	
			F	A	F	A	F	A	F	A	F	A	F	A
Academic Unit			31.8	68.2	23.1	76.9	13.2	86.8	4.9	95.1	6.4	93.6	18.7	81.3
	1978						1982		1984					
	F	A					F	A	F	A				
Support Unit	3.9	96.1					29.7	70.3	11.7	88.3				

*F - In Favour

*A - Against

Source: This table was compiled from information provided by the College Relations Commission.

An additional problem arises from the fact that the CCBA sanction provisions do not associate the timing of a strike vote with the occurrence of a strike. When coupled with the fact that the offer vote is on a last offer received rather than a final offer, the colleges' bargaining unit members could go on strike over disputed matters which may no longer have the form and substance which the membership initially voted to strike on. While OPSEU claims that it keeps its membership informed of the true state of negotiations at all times, and would not dare to actually call a strike based on a strike vote taken on an 'old' position, the current system has a very high potential for either intentional or unintentional abuse.

The Labour Relations Act[15] provides for a different form of last offer vote. The union may take its strike vote whenever it wishes. However, the employer controls its last offer vote. Under Section 40(1) of the LRA the employer **may** request such a vote and the Minister of Labour **will** grant that request. The vote may be called for either before or after a strike is taken. The experience under this provision of the LRA is summarized in Table 14.2

TABLE 14.2

ONTARIO LABOUR RELATIONS BOARD

LAST OFFER VOTE ACTIVITY

	1982-83	1984-85	1985-86	SINCE JUNE 1980
NUMBER OF REQUESTS	21	26	24	137
VOTES CONDUCTED	17	23	12	
SETTLEMENTS BEFORE THE VOTE	1	3	7	34
CASES WITHDRAWN	3		4	9
CASES PENDING			1	
OFFER ACCEPTED	3	8	4	23
Votes In Favour	456	457	576	
Votes Against	341	265	284	
OFFER REJECTED	14	15	8	70
Votes In Favour	798	569	742	
Votes Against	1958	1964	473	

14.2.3 Summary

The consistently protracted negotiations indicate that the process of collective bargaining in the colleges is not effective. The current dispute resolution mechanisms either do not work, or are not used properly. When this is combined with the strict timelines outlined in the CCBA, it is obvious that fact finding, as it stands, does not achieve its purpose. Although the ideas behind it are useful, it is ineffective in its current form. Mediation and arbitration do not appear to be causing difficulties; however, the last offer received vote and the lack of a link between the strike vote, notice to strike, and an actual strike, puts the members of the bargaining unit in peril of not being fully informed prior to the initiation of a work stoppage.

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[15] Labour Relations Act, R.S.O. 1980, c. 228.

14.3 RECOMMENDATIONS

Both parties to collective bargaining, as well as many outside experts who have looked at the colleges' collective bargaining system, have commented on the lack of 'pressure' on the parties to negotiate collective agreements. Put quite simply, there is no penalty on anyone for engaging in extended negotiations. The Council of Regents invariably agrees to retroactivity in pay when an eventual settlement is reached, the colleges pay the union negotiators for time spent in negotiations[16], and the employer can, presumably, invest salary and benefits increases and make some money while negotiations are going on. The employer has been reluctant to lock-out its unionized employees and risk public approbation for shutting down the system and, as long as the employer has a reasonable offer on the table, it is very difficult for the union to mount a realistic strike threat.

There are some people who see no downside to such extended negotiations. After all, it was Churchill who said that "To jaw-jaw is better than to war-war." But protracted negotiations are damaging. Apart from the impact of frustration on negotiators themselves, continued uncertainty is an impediment to building constructive relationships at both the provincial and local-levels. While the propaganda wars go on between the bargaining agents, it is hard to concentrate on the primary purpose of the colleges ... delivering high quality education.

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[16] See Section 13.03, academic unit collective agreement, 1985/87.

Certainly, care must be taken not to increase the chance that a strike or lock-out will occur as a result of tampering with the bargaining process. The following recommendations are designed to:

- remove current impediments to the progress of negotiations and reduce the overall time spent in negotiations, without significantly increasing the probability of strike or lock-out;
- provide each party to negotiations with the opportunity to exert sufficient pressure on the other party to conclude negotiations, or exercise its sanction option, if negotiations are so protracted that the damage done by the delay is worth the risk of the sanction being exercised.

Recommendation #28*

The Colleges Collective Bargaining Act should include the following provisions relating to the negotiation of collective agreements for academic and support staff bargaining units:

(a) The termination date of the collective agreement shall be left to the parties themselves to negotiate.

(b) Notice to bargain shall be given 90 days before the expiry of a collective agreement and the parties shall meet within thirty days of the serving of notice to bargain in good faith.

(c) The union may vote to strike, or the employer may vote to lock-out at such time as each may decide, but no strike or lock-out shall be permitted until 30 days

notice of strike or lock-out has been given and the collective agreement has expired.

(d) Such votes shall be supervised by the Colleges Relations Commission. They shall be valid for a period of three (3) months after such time the parties will be required to hold another vote before strike or lock-out action is taken.

(e) Within three (3) days of notice to strike or lock-out being given, the College Relations Commission shall appoint a mediator who, within a further five (5) days, shall recommend whether a fact finder should be appointed.

(f) In the event that a fact finder is appointed, the appointment shall be made within three (3) days of the recommendation in (e) above. The fact finder shall meet with the parties and prepare a report for distribution to the parties and the public within 15 days of the appointment.

(g) No strike or lock-out shall occur until five (5) days after the release of the fact finder's report or the final offer vote in (h), below.

(h) At any time up to five (5) days before a strike is to occur, the employer may request a vote on its final offer and such a vote shall be conducted by the CRC within five (5) days of such request being made and the strike date shall be postponed by five (5) days. This offer shall be presented to the union at the time that the request is made.

(i) Notwithstanding any of the above, the CRC may appoint a mediator at any time that it judges such an appointment to be appropriate.

Recommendation #29

The College Relations Commission should substantially revise its procedures for conducting supervised votes with a view to improving the effectiveness of supervision.

14.4 BASIS FOR RECOMMENDATIONS

These recommendations call for quite dramatic changes to the way in which the parties negotiate in the colleges. The timelines are summarized in Figure 14.2.

FIGURE 14.2

NEGOTIATIONS TIMELINES

EVENT		TIMING
CONTRACT EXPIRY	E	
NOTICE TO BARGAIN	B	E-90
BARGAINING STARTS		E-60
STRIKE VOTE		
NOTICE TO STRIKE	N	S-30
MEDIATOR APPOINTED		N+3
FF RECOMMENDATION		N+8
FF APPOINTED		N+11
FF REPORTS		N+25;S-5
STRIKE DATE	S	N+30 OR L+10
LAST OFFER VOTE REQ	L	<(S-5)
LAST OFFER VOTE		L+5

14.4.1 Contract Expiry and Notice to Bargain

For reasons noted above, there exists no rationale for the support of any expiry date to be specified in enabling legislation for collective bargaining purposes. Also, the amount of time between giving 'notice to bargain' and commencing bargaining is currently so long that people feel no urgency. The 90-day period recommended is in-line with other bargaining regimes and should be quite sufficient.

14.4.2 Fact Finding

The CCBA and SBTCNA introduced the concept of fact finding to labour relations in Ontario. The Commission recommends retention of fact finding primarily because the public has a right to know what is going on in public sector labour disputes. Indeed, with the separation of the government from colleges' collective bargaining recommended in this report, it will become even more important to have a clear idea of what is going on in the event that a strike or lock-out is threatened.

Currently, unless the parties request otherwise, fact finding is tied to the agreement expiry date of August 31. Fact finding takes place early, and it is quite useless. It neither assists the parties nor does it satisfy the public's 'right to know' what the dispute is all about since it is far too early in negotiations to really know what it's all about! At the moment, fact finding is at best an irrelevance and at worst an impediment to getting on with the process of negotiations.

The recommendations call for fact finding to be retained but propose that it be conducted late in the collective bargaining process rather than early. Indeed, it should not take place until the parties are well along in the countdown to a strike or lock-out. Then it should be optional, recommended (or not) by the mediator appointed to the dispute after a notice of strike or lock-out has been given. This should ensure that bargaining does not cease and go into cold storage while waiting for the fact finder to be appointed and to conduct hearings.

The recommendation to have fact finding late in the process, after strike/lock-out votes have been taken, should ensure that negotiations have proceeded since neither party would be in a position to secure a strike or lock-out vote from its constituents without convincing them that negotiations are truly at an impasse. Therefore, the fact finder would be reporting to the public at advanced stages of negotiations when the issues in dispute have clearly surfaced and the parties' real positions are known.

This process is similar to the 'conciliation' step in both the Ontario and Canadian labour jurisdictions. The fact finder's report is analogous, under this regime, to a conciliation board report. If the mediator does not recommend one, this is analogous to a 'no-board' report under the LRA.

14.4.3 The Use and Timing of Sanctions

Recommendations are made which remove many of the impediments inherent in these time lines and yet provide appropriate checks and balances. The union should be free to take its strike vote whenever it wishes, based on the information it puts in front of its membership.

The current last offer received vote is discarded as pointless. It is potentially dangerous when it is used early in the process: it produces an offer which will clearly be improved upon later, but which is used as propaganda to encourage militance. The employer dare not, and should not, expose a bottom-line early in the negotiations process unless it is confident that the union is politically capable of accepting a bottom-line position at an early stage in negotiations. There are very few bargaining situations in which the parties have this level of mutual understanding and trust... which is why most negotiations tend to go down to the wire.

OPSEU has argued that the decisions to hold a strike vote or call a strike are essentially matters for the union to determine and legislation should not address such matters. An irresponsibly called strike vote is, in OPSEU's view, political suicide for union leaders and that fact, in and of itself, would be sufficient to deter either misrepresentation or precipitous action. However, it must be remembered that the CCBA contains effective provisions which bind every member of a bargaining unit to strike if the union calls a strike. The Commission, in an earlier chapter of this report, recommended that this provision be retained. This means that there must be an opportunity for a scrupulously conducted, vote on a genuine last offer provided for in the legislation. This belief underlies the recommendation that a last offer vote **may** be called for, by the employer, up to five days before a strike is due to take place.

This provision is similar to Section 40 of the LRA. It differs in that it limits the timing of an employers' offer to the period **before** a strike starts, whereas the LRA provision allows the vote to be called once a strike has begun. In the current and historical climate of collective bargaining in the colleges, the Commission sees grave dangers in allowing a strike to start and then permitting the employer to reveal a final offer. This may be necessary in the private sector, where strikes can last for weeks and months and there is a need to have a genuinely revised final offer voted on. Realistically, however, the government would never allow this situation to develop in the college system and such a post-strike vote provision is not required. In its recommended form, it is a 'check and balance' provision. It provides a way in which the employer could get out a genuine final offer to employees if it felt that the union was exercising a strike vote which the union had obtained based on misrepresenting the employer's position substantially. It is not a provision that is expected to be used at all, let alone routinely. Cavalier use by an employer which felt that it could stall negotiations because it had a chance to go over the heads of the union leadership to get a vote from the members of the bargaining unit as a whole, would be well advised to look at the experience under the LRA which shows that the vast majority of such votes result in rejection of the employer´s offer by the bargaining unit.

It is recommended that the request for a vote on a final offer may be made at any time after notice to bargain has been given by either of the parties. This means that if the colleges decide that negotiations are going on interminably, they could force the issue by demanding a vote on their last offer. However, this could be done only once in any round of negotiations.

The remaining time-line recommendations are designed to minimize the time allowed for various steps, such as appointing a fact finder, while providing sufficient time to actually conduct the various activities. While the time lines are short, to convey a sense of urgency and to promote parallel activities, such as continuation of negotiations while the fact finder preparing the report, they are feasible.

15

SUPERANNUATION

When the Colleges Collective Bargaining Act[1] superseded the Crown Employees Collective Bargaining Act[2], almost all the terms and conditions of employment became negotiable. The one exception was superannuation which is expressly excluded from the scope of bargaining in S.3 of the Act. This has been a continual irritant to the Union and, for a variety of reasons, to many others in the college system.

15.1 CURRENT STATUS

The Colleges of Applied Arts and Technology pension plan was established in September 1967 and operates under a management agreement between the Ontario Municipal Employees Retirement System (OMERS) and the Council of Regents under Section 16 of the Ontario Municipal Employees Retirement System Act[3]. This arrangement superseded the original system in which each of the colleges were separate signatories to the agreement.

The Pension Consultative Committee, a sub-committee of the Council of Regents, makes recommendations to the Council about pension policy and tries to work with the administrators at OMERS to handle administrative issues and problems. This committee has representation from the Council of Regents, the Ministry of Colleges and Universities, college management, and teachers and support staff. There is a representative from OMERS who, in recent years, has served as a resource person and abstained from voting. When approved by the Council of Regents, recommendations are then sent for approval to the Ministry of Colleges and Universities and, where required, to Management Board of Cabinet.

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[1] Colleges Collective Bargaining Act, 1975, c. 74.

[2] An Act to provide for Collective Bargaining for Crown Employees, 1972, c. 67.

[3] Ontario Municipal Employees Retirement System Act, R.S.O. 1980, c. 348.

The CAAT pension plan constitutes approximately 10 percent of the assets of the OMERS plan, which is Canada's largest pension plan with over $7 billion in assets. This would place an independent CAAT plan among the top twenty pension plans in the country on the basis of assets, currently estimated at approximately $700 million. Technical evaluation of the plan suggests that its performance in terms of Return on Investment is acceptable[4] but experts within the Ministry of Colleges and Universities believe that the rate of return could be improved by 0.5 to 1.0 percent with improved administration. This is, of course, strictly opinion.

The problems that have arisen, and continue to arise with the OMERS plan centre on allegedly very poor and inefficient administration which is reflected in the extensive amount of time it takes to get changes to beneficiaries, spousal coverage, entitlement, and so on. This has resulted in many complaints and the expression of severe dissatisfaction on several occasions by senior levels of government. There is a sense that independent pension managers and consultants could both increase the rate of return and also improve the administration of the plan substantially.

Over the last few years there have been many discussions and proposals for changing the CAAT pension plan, including a major consulting study in 1986 by Sedgewick Tomenson Associates and

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[4] This assessment was provided by the Staff Relations/Benefits Unit of the Ministry of Colleges and Universities and was not independently evaluated by this Commission.

Frank Russell Canada (ST/FR).[5] A major change is a very substantial undertaking and would require considerable legislative change in and of itself.

15.2 DISCUSSION

15.2.1 The Positions of the Parties

Historically, governments in Canada have been very reluctant to allow the negotiation of pensions in the public service. There appears to be a number of reasons for this, although they have never been explicitly stated. Discussions with various officials in the Ontario civil service suggest the following historical rationale for keeping pensions outside the scope of collective bargaining:[6]

- The government provided pensions to its employees long before the advent of collective bargaining in the public sector and has continued to offer excellent pension benefits, a fact which OPSEU is fully prepared to concede.
- The government guarantees pension benefits and, therefore, carries all the risk. Given its assumption of all the risk, the government has felt that it could not share the responsibility for the plan by negotiating it with OPSEU.
- Most public sector employees do not have the right to strike and their labour disputes are subject to interest arbitration. The government is very reluctant to let arbitrators determine pensions since very few of them have any actuarial expertise to address pension matters.
- The union does have an input into the amount of the pension since the pension benefit is tied directly to salary level, which is negotiable.

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[5] "Pension Study for The Colleges of Applied Arts and Technology", by Sedgewick Tomenson Associates and Frank Russell Canada, July 1986.

[6] This is an amalgam of reasons derived from discussions with various human resource and other officials in the Ministry of Colleges and Universities and the Human Resources Secretariat. It does not necessarily represent the thinking about this issue at the political level.

- Union control over the pension funds might lead to selective disinvestment in countries or firms or industries which were on union blacklists but that, notwithstanding such disinvestment decisions, the unions would expect the government to provide the necessary funds to cover the guaranteed benefits even if the investment decisions led to poor fund performance.

OPSEU´s position is that an individual´s pension is a term and condition of employment and it is quite common that pensions be a negotiable item in collective bargaining in the private sector. The Union feels - and here there is agreement from officials within the Ministry of Colleges and Universities - that although the CAAT plan represents about 10 percent of the assets in the OMERS plan, it receives relatively little attention. If the CAAT plan was a separate plan it would still be very large but could be managed and administered with the interests of CAAT employees first and foremost and the way to ensure that it really reflects such interests is to make it negotiable.

15.2.2 Pension Plan Negotiability

Essentially there are four elements of a pension plan which **could** be negotiable:

- The pension plan sponsor; who should actually control the pension plan.
- The type of pension plan; whether it should be a defined benefit or a defined contribution plan.
- The operations of the pension plan: what the various investment and administrative policies and procedures should be.
- The benefits which employees will receive and the contributions (if any) they have to make to receive a certain level of benefits.

On the surface, it is hard to argue against the proposition that pensions should be negotiable. Most of the traditional arguments against negotiability are based on paternalism. They assume that employees, through their representatives, are unable to make sensible choices about their futures within the tight overall legislation that governs pension plans and their administration. It should be possible for employees, through their elected representatives, to decide how much current salary or other benefits they want to trade off now in order to achieve certain levels of benefits in the form of pensions later on. Furthermore, with the wide variety of levels of attachment to the workforce (part-time, partial-load, and other categories of employees), with dual-career families and interrupted service, with job sharing and other innovative work arrangements, there is a clear need for a pension plan which is highly responsive to employees' needs and preferences.

However, the CAAT pension plan covers more than members of the bargaining unit and, of course, many members of the bargaining unit are not OPSEU members. To give control of the CAAT pension plan to the employee representative would clearly be inappropriate for these two reasons alone.

There is another strong argument against making all aspects of a pension plan negotiable. Pension plans must be managed fairly conservatively - high risk investment decisions and sound pension plan management do not go hand in hand. Collective bargaining is a fairly volatile activity. A certain bargaining team might be elected one year and have some very firm ideas about what the pension plan should be. One or two years later another bargaining team may be elected, with radically different ideas. It may insist that the nature of the pension plan be changed dramatically. The timing for such changes may be quite wrong, even 'though the changes themselves may be worthwhile. The net result could be a loss to the pension plan. For this reason alone, the relationship between the pension plan and contract negotiations must be very carefully managed.

With the changed role of the Council of Regents it seems that the Council's responsibility as the sponsor of the current plan, on behalf of the colleges, becomes an anachronism and that some radical change in the structure of this plan is required. The ST/FR consulting report discussed several possibilities and reviewed some existing public sector plans in the province including the Hospitals of Ontario Pension Plan (HOOPP), the Ontario Hydro Pension Plan, and the Teachers Pension Plan.

That study recommends the establishment of a Pension Board composed of three government representatives, a member of the Council of Regents, and five members from the colleges. It also recommends that the colleges' representatives should be drawn from college presidents and senior financial and human resource personnel who, according to the report, are deemed to *"know and understand both the College system and the needs and concerns of the employees."* Quite incredibly, the report does not recommend one single 'non-management' representative on this board and does not provide for any union representation, despite the fact that union representatives form fifty percent of the Teachers Superannuation Commission and one-quarter of the HOOPP pension committee. The report allows that there should be union representation on the lower level Benefits Administration Committee, with powers to act in dealing with individual members' situations and to make recommendations to the board on the design of the plan.

The ST/FR report provides no reasons for excluding union representation from the proposed pension board. Nor does it discuss the possibility of having separate pension plans for unionized and non-union employees or similar plans with varying contributions and benefits other than to say - in their analysis of the OPSEU brief - that the new plan should be set up with a view to being able to split the plan by different employee groups.

It is possible that employee interests might be represented other than by their unions. Some universities, for example, have pension boards with designated positions for non-management academic and support staff who are elected by staff. However, such representatives lack the organization and expertise to be effective independent spokespeople for the staff. To develop expertise in making decisions on pensions requires considerable investment of time and effort and frequently requires the purchase of outside consulting and actuarial advice. A union can marshal such resources.

15.3 RECOMMENDATIONS

The establishment of an organizational and administrative structure for a pension plan of this size is a major undertaking and many of the elements of that undertaking are, quite frankly, beyond either the expertise or the terms of reference of this Commission. Furthermore, the question of the negotiability of pensions for unionized employees must be looked at in the much broader context of the pension plan for the colleges and what is happening to pension reform generally within the province and the country.

Notwithstanding this, the Commission has no hesitation in endorsing two principles:

- Pension plan contributions and benefits for members of the organized bargaining units should be negotiable by their union;
- The union should have an equal voice, with the employer, in all policy matters relating to the pension plan, including the type of plan, the administration and management of the plan, and investment policy.

Recommendation #30*

A new CAAT pension plan should be developed with one half of the pension board's members being union representatives. The chair of the pension board should be a neutral, appointed by the government following consultation with the colleges and the union, who shall only cast a vote in the event of a tie.

Recommendation #31*

The prohibition on the negotiation of superannuation (pensions) should be removed from the Colleges Collective Bargaining Act.

15.4 BASIS FOR RECOMMENDATIONS

These recommendations are made with some trepidation because of the complex nature of the issues to be dealt with. However, people are retiring earlier and living longer these days and the issue of pensions is becoming so important that employees must have an increased say in determining how their pensions are funded and what size they will be.

The recommendations make pensions negotiable, but in two different ways. The immediate way is at the bargaining table. Here it is envisaged that the union could demand higher pensions, perhaps by demanding that the employer increase its share of contributions to the pension plan, perhaps by suggesting that the employees could put different amounts into the plan. The parties would find out the costs of these demands from the pension plan administrators and they would then negotiate with respect to the demands. The eventual decision would be reflected in the costs of settlement. If the union wished to see changes in investment philosophy (e.g. restricted investment), in the type of plan (e.g. defined benefits or defined contributions), or in the plan administration, it would seek such changes through its representatives on the pension board.

Equal representation on the pension board is a necessity for the union to have a large amount of influence on the decisions of that board. Less than fifty percent and the union's influence will not be commensurate with the responsibility it has to its members to negotiate terms and conditions of employment on their behalf. However, with a 'fifty-fifty' representation, there is always the possibility of a deadlock on the board. This is a very real possibility if - as the union's submission reviewed in the ST/FR report indicates - there is substantial disagreement over investment philosophies and policies. It is a wise move to provide for some mechanism to deal with such deadlocks and, therefore, the Commission proposes that the chair of the pension board be independent and cast his or her vote only in the event of a deadlock in the board's deliberations.

Some consideration was given to the recommendation that a separate plan be created for members of the bargaining unit or even that there be two plans, one for the support staff and one for the academics. This was rejected although it might be something that could happen in the future by the decision of the pension board. The Commission was not sympathetic to the idea because the secession of large groups from a pension plan results in significant costs since the additional overhead of administration and management has to be incurred by both those who secede and those who are left.

16

THE COLLEGE RELATIONS COMMISSION

The College Relations Commission (CRC) was established under the Colleges Collective Bargaining Act[1] to carry out a number of functions in colleges collective bargaining including:

- training and appointing third-parties as fact finders, mediators, selectors, and arbitrators;
- making determinations concerning bad faith bargaining and jeopardy;
- determining procedures for, and conducting, the last offer received and strike votes required by the CCBA;
- gathering statistical data on salaries, workload, and other terms and conditions of work;
- generally overseeing collective bargaining in the colleges, providing staff assistance to the colleges when they needed it.

16.1 CURRENT STATUS

The CRC shares both the staff and the office space of the Education Relations Commission (ERC). In practice, the CRC has confined itself to the appointment of third parties and, as evidenced in the case of the 1984 strike, the declaration of jeopardy. The Ministry of Colleges and Universities provides $65,000 toward the operational budget of the ERC/CRC.

16.2 DISCUSSION

The CCBA gives some statutory responsibility for data gathering and analysis of the colleges to the College Relations Commission

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[1] Colleges Collective Bargaining Act, R.S.O. 1980, c. 74.

(CRC). The CRC has the potential and the expertise, as a neutral body, to gather data, do analysis, and make appropriate comparisons with other educational institutions in Ontario and, indeed, with other provinces in such areas as workload, class sizes, and salaries and benefits paid to full- and part-time employees. While the parties will always want to gather their own data for collective bargaining purposes, the data gathered by the CRC could also play a fundamental role in attempting to develop a more constructive relationship between the parties by eliminating the opportunity for accusations of deliberate acquisition of distorted or biased data. The CRC could also act, as the ERC does in the school sector, to gather information on the increasing number of local agreements in the colleges.

The CRC has never carried out its functions to the extent required. Graeme McKechnie examined the functions of the CRC on behalf of the Commission[2]. He concluded that the CRC's lack of statistical analysis was not through any planned reluctance or refusal to provide such analysis, but rather on the basis that there have been few potential users of the material. The ERC provides comparisons between different school boards, each of which has its own collective agreement. It was thought that comparative data in the college system would not be useful because of the single collective agreement for each of the bargaining units. However, this ignores the need for comparative data on working conditions and the pay and other working conditions of part-time employees. Requests for additional resources to undertake this type of analysis have been consistently denied, the latest having been turned down in 1986.[3] Attempts to offer the CRC's Grievance Mediation and Relationship

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[2] Graeme H. McKechnie, "Report to the Colleges Collective Bargaining Commission", October, 1981.

[3] The request was in the form of a July 8, 1986 memo to Dr. Bernard Shapiro, Deputy Minister of Education from R.H. Field, Chief Executive Officer of the ERC/CRC. It requested a statistical clerk and research specialist to compile statistical data for the colleges.

By Objectives programs to the colleges have been made on several occasions but have not been accepted by one or both of the parties.

The CRC is simply not a major actor in the collective bargaining system in the colleges in the way that it is in the school system. Indeed, the attitude of the parties toward the CRC is vaguely contemptuous as they question its professionalism and, on some occasions, its objectivity. This is particularly evident in matters relating to the conduct of last offer received and strike votes.

The Commission has given some consideration to enlarging the role of the CRC to encompass the full range of quasi-judicial functions necessary under the existing CCBA and its proposed amended form. For example, the CRC, rather than the Ontario Labour Relations Board, could become the judicial body for determining matters of certification, composition of bargaining units, and the full range of unfair labour practices including the legality of strikes and lock-outs and bad faith bargaining allegations. At the present time it is limited to deciding matters of bad faith bargaining and jeopardy.

There are good arguments for and against such an expanded role. On the plus side is the argument that an appropriately funded CRC, with the appropriate mandate, could develop the specialized knowledge and understanding of the educational system in the colleges which would allow it to make educationally-oriented judgements not available from the generalized OLRB. Furthermore, a less heavily loaded CRC would be able to respond faster and more flexibly than an overloaded OLRB.

On the minus side there are three arguments. First, the undoubted and accepted professionalism of the OLRB in the exercise of judicial functions with respect to matters arising under various provincial labour statues would be hard to replicate. Second, there is some value to separating mediative and assisting functions from judicial functions since it is difficult for any parties to accept ´assistance´ from the same body which will then sit in judgement in matters between them. Third, the CRC does not enjoy a reputation as a fully ´arms length´ (from government) organization, partly as a consequence of the very rapid determination of jeopardy in the 1984 strike.

Discussion with Judge Abella, Chair of the Ontario Labour Relations Board, helped the Commission focus on these issues. Following discussions with the vice-chairs of the OLRB, Judge Abella urged this Commission not to put any additional load on the OLRB. Judge Abella´s reasons for this appeared to be related primarily to the OLRB´s lack of resources to service any additional demands which might emanate from the college system as a result of this Commission´s recommendations.

16.3 RECOMMENDATIONS

There is considerable value to offering specialized third-party assistance to the colleges and there is a clearly recognized and urgent need to develop and distribute reliable and valid data to assist the parties in collective bargaining. Furthermore, the bargaining regime recommended in this report continues to require many of the functions that the CRC has been carrying out in the way of third-party assistance, vote supervision, and the declaration of jeopardy and a reorganization of bargaining units will no doubt increase the need for various quasi-judicial determinations. These recommendations are designed to ensure that:

- the CRC has a refreshed and invigorated mandate to provide neutral data for bargaining purposes and to offer specialized third-party assistance to the parties;
- it is adequately funded to be able to discharge this mandate competently.

Recommendation #32*

The mandate of the CRC should be amended to include all judicial and quasi-judicial functions relating to collective bargaining in the colleges including, but not limited to, matters of certification, the composition of bargaining units, determination of unfair labour practices, and charges of bad faith bargaining.

Recommendation #33

A further $200,000 should be appropriated for its annual budget to add a colleges employee relations officer, to fund the development and maintenance of a colleges' collective bargaining data base, and to offer a program for local employee relations improvement to the colleges.

Recommendation #34

The College Relations Commission should review its procedures for carrying out supervised votes in the colleges and work with both union representatives and representatives of college administration to streamline and improve these procedures.

16.4 BASIS FOR RECOMMENDATIONS

These recommendations are based on a number of considerations which lead to the conviction that the CRC should play a greater role in colleges' collective bargaining than its resources and mandate have allowed in the past.

16.4.1 Expanding the Mandate of the CRC

The Commission has recommended a significant expansion of the mandate of the CRC by transferring certain judicial and quasi-judicial functions from the OLRB to the CRC. As described above, this has both advantages and disadvantages. On balance, however, the recommendation is based on four arguments. First, the CCBA, both currently and as amended by the recommendations in this report, is a radically different form of legislation than the LRA[4]. The Ontario Labour Relations Board has a ´mind-set´ toward the LRA and it makes sense to have a separate body which is immersed in, and sensitive to, the particular legislative framework within which collective bargaining in the colleges is conducted.

Second, the CRC, as constituted, has the ability and professional competence to undertake these functions. It can operate in tribunal form, using either the chair or vice-chair as a neutral or by designating another third-party as the neutral chair of any specially constituted tribunal. However, an expanded quasi-judicial role will require a clear, arms-length relationship between the CRC and the government.

Third, the mediative and adjudicative functions of the CRC can be separated organizationally so that a minimum of cross-contamination occurs, just as this is done in the OLRB organization. The field services department of the CRC would appoint mediators and fact finders whereas the Commission itself would be the quasi-judicial body for other matters.

Finally, the recommendations in this report are likely to generate a number of disputes regarding certification and composition of the various bargaining units. These must be resolved promptly and there is a better chance of this occurring under a specially constituted board or commission rather than by the currently overloaded OLRB.

16.4.2 Specialized Third-Party Assistance

The CRC performs a number of functions which are necessary for collective bargaining. While it is quite true that some of these, such as the appointment of third parties, could be done by another agency such as the Ministry of Labour, the CRC has developed a corps of skilled mediators and fact finders with some knowledge of educational institutions and some empathy for the parties. The Ministry of Labour mediators and conciliation staff do not, in general, have this orientation toward education and, while it might be possible for the Ministry to avail themselves of the assistance of this group of third-parties, it would be easier for the CRC to continue with this function.

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[4] Ontario Labour Relations Act, R.S.O. 1980, c. 228.

In particular, interventions such as Grievance Mediation and Relationship By Objectives programs would be of benefit to the colleges. A number of organizations in the United States and Canada have experienced considerable success with this type of intervention[5], however it requires some knowledge of the bargaining context and some understanding of the various roles of educators and educational administrators. The CRC is well-equipped to offer such programs and should be aggressive in offering them in the college system. While it is true that both parties must want some intervention for it to be successful, such a 'want' can be stimulated by aggressive promotion.

16.4.3 The Supervisory Function

This report has proposed that the government put greater distance between itself and bargaining between the colleges and unionized employees by creating CERA, the Colleges Employee Relations Association. This increases the need for an independent agency, such as the CRC, to exercise an oversight function and, specifically, to advise the government when situations are developing or have occurred which could place students' educations in jeopardy.

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[5] Paul D. Bergman, "Conflict Management After RBO: From Process to Procedure". (Ph.D. dissertation, The University of Western Ontario, 1987).

A frequent criticism of the CRC, which was witnessed first-hand by the Commission in one of its visits to a college during the last offer received voting period, is its supervision of votes. The criticism is focused on the personnel it utilizes to supervise the votes (their competence and impartiality) as well as the procedures that are used. Hence the recommendation that the CRC should review these procedures with the parties.

16.4.4 Information-Based Bargaining

Something must be done about the data required by the parties in order that they may bargain sensibly. Almost every fact finder, arbitrator, and mediator has commented on the lack of reliable and valid data concerning various components of compensation, benefits, part-time employees, and working conditions, particularly workloads and class sizes. While the parties gather some information themselves, it is fragmentary and of dubious reliability. Indeed, the colleges themselves have never managed to get their acts together in terms of providing data which can be compared across colleges. Whether this is because they have not known how to get such data or because it has served their interests not to have it, is simply not known. What is clear is that in such a data-poor climate, speculation, exaggeration, and accusation become the substitutes for careful analysis in response to inquiries regarding the college system.

The CRC has the expertise to work with the parties to design and manage an appropriate data base which can be used for bargaining and, if the parties will not cooperate in this willingly, the CCBA gives the CRC the authority to get the data from the colleges. The importance of such a data base will increase if the other recommendations in this report are accepted. The Colleges Employee Relations Directorate's data base will be tainted because it will be used to support or attack positions in negotiations. The CRC, on the other hand, will be able to provide untainted, dispassionate data for both of the parties, the government, and third-parties who must mediate, fact find, or arbitrate. The provision of such data will signal a quantum improvement in the contribution that the CRC will be able to make to helping the parties establish a more constructive, data-based, problem-focused bargaining relationship.

17

PEOPLE

The activities involved in collective bargaining are greatly influenced by the attitudes, beliefs, skills, and knowledge of those involved in them. These people are also affected by their experiences of the process and its outcomes.

17.1 CURRENT STATUS

The interpersonal relationships in negotiations, particularly those involving the academic bargaining unit, have elicited comment by many observers from time to time throughout the colleges history. Whitehead´s summary in his fact finding report is perhaps the most devastating:[1]

> *"...the union-management and union-neutral collective bargaining relationships are characterized by conflict, intense competition, the overt use of power, direct influence attempts, aggressive and antagonistic behaviour, a high level of distrust, and the denial of legitimacy both to the other party (both as a bargaining team and as individual members of the team) and to neutrals such as fact finders and the Commission which appoints them."*

Whitehead was not alone. Pitman described the parties as having *"a confrontational style"* and Skolnik commented on *"the poor quality of the bargaining relationship."* Gandz and McKechnie have also described the bargaining relationship with a variety of terms such as uncooperative, destructive, non-collegial, and so on.

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[1] David J. Whitehead, "Report of the Fact Finder", August 17, 1984, p. 19.

17.2 DISCUSSION

It may be stretching the mandate of this Commission to deal with this issue, particularly since laws or regulations cannot be passed to specify what types of people should be involved in collective bargaining processes, and how they should behave. But it is totally unrealistic to expect that changes in statutes or regulations alone will have significant impacts on collective bargaining unless the participants involved want it to change and are prepared to adapt their behaviour accordingly.

Mature and constructive collective bargaining relationships are characterized by trust between the parties, some measure of ascribed legitimacy to the interests of the other party, some basic desire to cooperate in areas of mutual concern ... and it helps if the parties like each other a little bit![2] The relationship clearly has an impact on the way in which issues are perceived; whether they are seen as common-problems, possible misunderstandings, or as clear conflicts of interest. As Figure 17.1 demonstrates, both the perception of the issues and the nature of the existing relationship have an impact on the selection of behaviours in negotiations and, consequentially, the emergent relationship.

Cheap shots, attacks on people rather than ideas, attempts to mislead and obfuscate ... all of these behaviours attack the basic level of trust, legitimacy, cooperative tendencies, and liking in a relationship. Common-problems and misunderstandings are then perceived as conflicts of interest and the opportunity for joint gain through problem solving is unexploited. Conversely, expressed respect for the other party's position, sharing of data, empathizing with their problems, all help to build trust, respect, a sense of legitimacy and even some liking.

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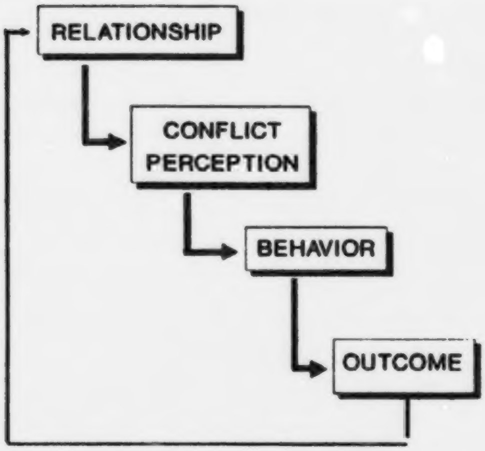
[2] R.E. Walton and J.B. McKersie, A Behavioral Theory of Labor Relations (New York, N.Y.: McGraw-Hill, 1965).

FIGURE 17.1
THE UNION-MANAGEMENT RELATIONSHIP



Under such circumstances, misunderstandings are resolved and common problems are tackled with a view to mutual gain. The parties may still fight over conflicts of interest but they fight fairly.

Union representatives in negotiations are elected by the rank-and-file membership. While there is nothing that the colleges could or should do to interfere with this process, sensible college administrators will recognize that there is value to ensuring that support and academic staff who want to participate in union affairs are not discouraged from doing so. A particular responsibility falls on the president and senior administrators. If union officers are characterized by the senior administrators as the disaffected opponents of administration, such characterization will spill over into day-to-day employee relations in the college. If faculty or staff feel threatened by participating in union affairs, then the union will never be representative of the mainstream of faculty and support staff in the colleges and this works to everyone's disadvantage.

The colleges should not involve certain kinds of people in collective bargaining. Overly emotional people, who cannot manage the extended hours and inevitable frustrations which are commonplace in collective bargaining, should not be at the negotiating table. Individuals can be wonderfully sincere, full of the milk of human kindness, but if they are temperamentally unsuited to the rigours and strains of the bargaining process, they should not be involved.[3]

Both parties must be ultra-cautious in the ways in which they present their positions through the media and their internal communications. No doubt someone thought that the cartoon in a 1987 negotiations update bulletin depicting the Council of Regents as cowering cavemen, and the union negotiators as club-wielding neanderthals was funny.[4] They had little idea the extent to which this cartoon reinforced the negative stereotypes that people had of the union bargaining team and, by reflection, union members in general. This helps neither the development of a constructive relationship nor the Union's interests. Similarly the colleges must be very careful in the ways in which they characterize union demands in their communications during negotiations or when sanctions are exercised.

It is tempting to suggest that individual behaviour in bargaining has been caused by the difficult past experiences which have been identified elsewhere in this report. The lie to this is given by the relationship between the support staff and the negotiators. Over the years, this has proven to be mature and constructive despite experiencing many of the same pressures as the academic negotiations. These parties have negotiated, argued, postured at times, broken off negotiations, had a strike ... but have still maintained a reasonable level of mutual respect.

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[3] There is extensive treatment of the issues of personality in collective bargaining in: J.Z. Rubin and B.R. Brown, The Social Psychology of Bargaining and Negotiations (New York: Academic Press, 1975), especially pp. 1593-96.

[4] News Bulletin of the CAAT academic team Number 8, September 1977.

17.3 RECOMMENDATIONS

If one or both of the parties **want** to have a militant, destructive, conflict-ridden relationship because that suits their purpose, then these recommendations will be of limited value. However, if they prefer to conduct negotiations on a more reasonable basis, they should:

Recommendation #35

Select bargaining team members for their interpersonal skills as well as for their knowledge of the issues.

Recommendation #36

Prepare all bargaining team members thoroughly so that the inexperienced members are aware of the emotional demands of negotiations and how to cope with them.

Recommendation #37

Prepare and discuss an explicit statement of the desired relationship which should emerge from bargaining, review this statement periodically during the negotiations and review all communications about the bargaining process against the explicit statement developed above.

Recommendation #38

Jointly, during bargaining, take some time to discuss the relationship that is emerging from bargaining as well as the substantive issues.

17.4 BASIS OF RECOMMENDATIONS

These recommendations are so obvious that they require little elaboration. On the employer's side of bargaining they should be implemented through the Colleges Collective Bargaining Directorate as part of a professional approach to the conduct of negotiations. The Union will tend to have less control over some of these activities, particularly the composition of the bargaining team, but perhaps the rank-and-file who elect the members of the bargaining teams might give them some thought.

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IMPLEMENTATION

This report has been prepared with the advice and assistance of most of the people who are involved in collective bargaining in the colleges. This does not mean that they will necessarily agree with all of the recommendations that are made. Certainly there should be an opportunity for further consultation once everyone has had the opportunity to read the report and reflect on the analysis it contains, the principles on which the recommendations are based, and the recommendations themselves. However, given the process used by this Commission, including extensive and iterative consultations with the parties involved in collective bargaining, such consultations should be brief.

Legislation will then be required to enact many of the recommendations. Realistically, the drafting of legislation will take about two months, thereby extending the date of introduction of amendments to April 1988. Depending greatly on the legislative calendar and the extent to which the proposals are contentious, proclamation of the required legislative amendments is unlikely to occur before the Fall of 1988.

At the time this report was being completed, the support staff had just concluded a two-year agreement which extends to August 31, 1989. Academic staff negotiations were stalled but, in all probability, there will be a two-year agreement negotiated sometime in 1988 which will also expire on August 31, 1989. This gives a 'window of opportunity' for the introduction and passage of whatever legislation is required to give force to these recommendations either as they stand or as they may be amended following further consultation. The 'window' is not a very large one. Ideally, the enabling legislation should be in place so that the process of research and negotiation for the integration of sessional and part-time (less than 7 hours/week) employees can proceed quickly and be negotiated or arbitrated **before** the next round of negotiations takes place.

These negotiations should be conducted by the newly formed Colleges Employee Relations Directorate (CERD) which has to be set up and staffed. There is no reason why this should have to wait for legislative approval. It could be established, on at least an interim basis, by the colleges themselves assuming that they had the appropriate funding and authorization from the Ministry of Colleges and Universities. Prompt action on establishing CERD as an operational organization would speed up the process of negotiation with the Union. There is no reason why, given agreement in principle, the preliminary stages of data gathering and ´discussion´ with OPSEU could not take place in anticipation of the legislation. If this is not done, the 1989 negotiations will have to proceed with the same structural and process deficiencies that currently exist.

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CONCLUDING COMMENTS

For Ontario, the challenges of the next few years are going to be enormous; the need to be increasingly competitive in an era of technological innovation and expansion of the global economy has never been greater. The colleges have an important role to play in preparing young people to meet those challenges and in reeducating and retraining adult workers to lead satisfying and productive lives by mastering new technologies and building their skills in developing sectors of the economy. Whatever direction the colleges develop in, it is hard to imagine our society being able to build its base of valuable human assets without major contributions from the college sector.

This kind of challenge should make the years ahead exciting ones for those who are involved in education and training. There are real opportunities for innovation; the colleges, with their orientation toward the workplace and the community, their flexible structures, and their relatively responsive governance systems, should be exciting places to work and build satisfying careers.

While technology is increasingly having an impact on the way students learn and are taught, no-one is forecasting the demise of the skilled and motivated teacher. Teaching is a people business, and it is of critical importance to recruit, select, train, develop, reward, and nurture those who teach in the colleges, the support staff without whom education and training could not be delivered, and those who manage and administer the system.

It is the excitement of this challenge which makes the existence of poor union-management relations so disheartening.

There is a significant opportunity cost when so much energy and talent is spent fighting each other instead of working together to improve the quality and reliability of education and training. Where the relationships are good - and there are many colleges where they are excellent - people report that they have the opportunity to earn a living doing something worthwhile. Surely that is worth a great deal.

Realistically, there will be times, issues, events and circumstances when the interests of the administrators of colleges and employees are opposed, particularly when resources are scarce. There will be many situations in which these groups - and individuals within the groups - disagree as to the appropriate course of action, even if they share common objectives. The test of the maturity of the relationship will be in how they handle these disagreements. Will it be with some understanding of the others' position or insensitivity to it? Will it be with respect for the legitimate role of the other party in negotiations or with disdain and contempt for that role? Will it be with good communications, skilled problem-solving and accommodation or with the crude use of threats and power?

No-one who has observed collective bargaining in the colleges can doubt that there is a need for change; the question is, do the parties want to? The recommendations of this Commission are designed to promote improvement in these relationships by removing some of the obstacles and impediments to constructive collective bargaining. They will have maximum impact only if there is a genuine desire to improve the relationship by everyone who is involved in the collective bargaining process. The enabling framework has been recommended - now it is a matter of will.

BIBLIOGRAPHY

BIBLIOGRAPHY

BOOKS

Aaron, Benjamin.; Grodin, Joseph R.; and Stern, James L., eds. Public Sector Bargaining: Industrial Relations Research Association Series. Washington D.C.: The Bureau of National Affairs Inc., 1979.

Carr, R.K. and Van Eyck, D.K. Collective Bargaining Comes to the Campus. Washington D.C.: American Council on Education.

Colosi, Thomas R. and Berkeley, Arthur Eliot. Collective Bargaining: How it Works and Why. New York: American Arbitration Association, 1986.

Craig, A.W.J. The System of Industrial Relations in Canada. Toronto: Prentice-Hall Canada, 1983.

Dennison, John D. and Gallagher, Paul. Canada's Community Colleges: A Critical Analysis. Vancouver: University of British Columbia Press, 1986.

Douglas, Joel M. and Kotch, Elisabeth A. Directory of Faculty Contracts and Bargaining Agents in Institutions of Higher Education. The National Center for the Study of Collective Bargaining in Higher Education and the Professions, Baruch College, City University of New York, 1986.

Douglas, Joel M. and Campbell, Susan. Collective Bargaining in Higher Education and the Professions: Bibliography No. 13 - January 1985. The National Center for the Study of Collective Bargaining in Higher Education and the Professions, Baruch College, City University of New York, 1985.

Downie, B.M. The Behavioural, Economic, and Institutional Effects of Compulsory Interest Arbitration. Ottawa: Economic Council of Canada, December 1979.

Dunlop, J.T. Industrial Relations Systems. New York: Henry Holt and Co. Inc., 1958.

Gandz, J. and Beatty C. Changing Relationships in Educational Bargaining. Toronto, Ontario: Education Relations Commission, 1986.

Gandz, J. and Beatty C. "Changing Union-Management Relations." In Collective Bargaining in Canada, ed. Sethi. Toronto: Methuen, 1988. In press.

Gappa, Judith M. Part-Time Faculty: Higher Education at a Crossroads. Washington D.C.: Association for the Study of Higher Education, 1984.

Garbarino, Joseph W. "Faculty Collective Bargaining: A Status Report." In Unions in Transition: Entering the Second Century. Edited by Seymour Martin Lipset. San Francisco, California: Institute for Contemporary Studies, 1986.

Grodin, Joseph R.; Wollett, Donald H.; and Alleyne, Reginald H. Jr. Collective Bargaining in Public Employment Third Edition: Unit Four of Labour Relations and Social Problems: A Course Book. Washington D.C.: The Bureau of National Affairs, Inc., 1979.

Kochan, Thomas A. Collective Bargaining and Industrial Relations. Homewood, I.C.: Irwin, 1980.

Kochan, Thomas A. "Dispute Resolution Procedures." In Collective Bargaining and Industrial Relations. New York, N.Y.: Irwin, 1980.

Levine, Marvin J. Labour Relations in the Public Sector: Readings and Cases Second Edition. Columbus, Ohio: Grid Publishing Co., 1979.

Raskin, R. and Dunlop, John. "Two Views of Collective Bargaining." In Challenge to Collective Bargaining. Edited by Ulman. New Jersey: Prentice-Hall, 1967.

Rubin, J.Z. and Brown, B.R. The Social Psychology of Bargaining and Negotiations. New York: Academic Press, 1975.

Shaw, Lee C. "The Development of State and Federal Laws." In Public Awareness and Public Unions. Edited by Sam Zagoria. Englewood Cliffs, New Jersey: Prentice-Hall Inc., 1972.

Walton, R.E. and McKersie, R.B. A Behavioral Theory of Labor Negotiations. New York: McGraw-Hill, 1965.

Watson, G. "Resistance to Change." In The Planning of Change, eds. Benne and Chin. New York: McGraw Hill, 1969.

THESES

Bergman, Paul D. "Conflict Management After RBO: From Process to Procedure." Ph.D dissertation, The University of Western Ontario, 1987.

Hamblin, Frederick A. "An Analysis of the Policy Formulation Process Leading to the Establishment of the Colleges of Applied Arts and Technology." Doctor of Education thesis, University of Toronto, 1985.

Murray, James G. "Power and Politics in Academe: Faculty Unionism in Ontario." Ph.D. dissertation, University of Toronto, 1985.

JOURNAL ARTICLES

Adell, Bernard. "The Legal Framework of Faculty Collective Bargaining: Some Short Questions and Some Long Answers." Canadian Journal of Higher Education Vol. 5, No. 2 (1975): 57-75.

Ashlock, Marsha Huie. "The Bargaining Status of College and University Professors Under the National Labor Relations Laws." Labor Law Journal Vol. 35, No. 2 (February 1984): 103-111.

Baker, H. Kent. "The Short- and Long-Term Effects of Collective Bargaining on Faculty Compensation." Journal of Collective Negotiations in the Public Sector Vol. 13, No. 3 (1984): 235-250.

Boyer, Carol M. et al. "Assessment and Outcomes Measurement: A View from the States." American Association for Higher Education Bulletin, March 1987.

Carter, D.D. "Collective Bargaining for University Faculty: A Legal Perspective." Canadian Journal of Higher Education Vol. 5, No. 2 (1975): 25-31.

Feuille, P. "Final Offer Arbitration and the Chilling Effect." Industrial Relations Vol. 13, No. 3, (Oct. 1975).

"Higher Education Reform: New Policy Statements Highlight NEA Perspective." In NEA Higher Education Reform Vol. 1, No. 6 (January 30, 1987): 1-10.

Knott, Ildiko. "Collective Bargaining Can Enhance Quality of Worklife." Community and Junior College Journal Vol. 54, No. 4 (December/January 1983/84): 18-21.

Kochan, Thomas A., and Dyer Lee. "A Model of Organizational Change in the Context of Union-Management Relations." Journal of Applied Behavioral Science 12 (January 1976).

Lawler, John J. and Greg Hundley. "Determinants of Certification and Decertification Activity." Industrial Relations Vol. 22, No. 3 (Fall 1983): 335-348.

Lawrence, Paul R. "How to Deal With Resistance to Change." Harvard Business Review (May-June 1954).

Lewin, K. "Frontiers in Group Dynamics: Concept, Method and Reality in Social Science." Human Relations, 1, (1947).

Lightman, Marjorie.; Katz, Esther.; and Helly, Dorothy O. "The Literature on Part-Time Faculty." The NEA Higher Education Journal Vol. iii, No. 1 (Spring 1987): 47-62.

McCabe, Robert H., and Brezner, Jeffrey I. "Part-Time Faculty in Institutional Economics." New Directions for Institutional Research 18 (Summer 1978).

Notz, W.W., and Starke, F.A. "Final Offer Versus Conventional Arbitration as Means of Conflict Management." Administrative Science Quarterly, Vol. 23 (June 1978).

"A Question of Governance: Five Opinions on Faculty participation in Directing Higher Education." Academe Vol. 68, No. 1 (January - February 1982): 3-12.

Rogow, R., and Birch, D.R. "Teaching Assistant Unionization: Origins and Implications." Canadian Journal of Higher Education Vol. 14, No. 1 (1984): 11-29.

Rynecki, S.B., and Pickering, W.C. "Educational Reform and its Labour Relations Impact from a Management Perspective." Journal of Law and Education 13 (July 1984): 477-507.

Schachter, Hindy Lauer. "The Relations Between Supervisor and Rank-and-File Unions During Contract Negotiations: A Case Study Analysis." Journal of Collective Negotiations in the Public Sector Vol. 13, No. 1 (1984): 15-28.

Smit, Gary. "The Effect of Collective Bargaining on Governance in Education." Government Union Review Vol. 5, No. 1 (Winter 1984): 28-34.

Stevens, C.M. "Is Compulsory Arbitration Compatible With Bargaining?" Industrial Relations, Vol. 5, No. 2, (February 1966).

Swofford, Joyce Ph.D. "Part-time Faculty and the Appropriate Bargaining Unit in Two-Year Colleges." Journal of Collective Negotiations in the Public Sector Vol. 13, No. 1 (1984): 67-84.

"The Status of Part-Time Faculty." AAUP Policy Documents and Reports: 1984 Edition.

Wilson, Bennie J. III.; Holley, William H.; and Martin, John S. "Effects of Faculty Unions on Administrators' Attitudes Toward Issues in Higher Education." Journal of Collective Negotiations in the Public Sector Vol. 12, No. 3 (1983): 231-242.

PROCEEDINGS

Begin, James P. "Scope of Bargaining: Implications for Traditional Faculty Governance - II." Proceedings of Seventh Annual Conference. New York, New York: The National Center for the Study of Collective Bargaining in Higher Education, April 1979.

Benson, Dena Elliott Esq. "Legislative Update: Status of Ohio's Public Employee Bargaining Law Senate Bill 133." Proceedings of Twelfth Annual Conference. New York, New York: The National Center for the Study of Collective Bargaining in Higher Education, April 1984.

Delgrosso, George M., ed. "College Perspective ´77: Confrontation on Collegiality." Proceedings of Annual International Institute on Community Colleges. 8th, Lambton College, Service, Ontario, Canada, June 13-16, 1977.

Diamond, Arlyn. "Bargaining With "Non-Tenure Track" Faculty: A. The Massachusetts Experience." Proceedings of Fourteenth Annual Conference. New York, New York: The National Center for the Study of Collective Bargaining in Higher Education, April 1986.

Douglas, Joel M., ed. Campus Bargaining at the Crossroads: Proceedings 10th Annual Conference April 1982. The National Center for the Study of Collective Bargaining in Higher Education and the Professions - Baruch College, City University of New York, 1982.

Ginsburg, Sigmund G. "Avoiding Financial Exigency." Proceedings of Eleventh Annual Conference. New York, New York: The National Center for the Study of Collective Bargaining in Higher Education, April 1983.

Kelley, Edward P. Jr. "State and Federal Legislation: Existing/ Proposed." Proceedings of Fourth Annual Conference. New York, New York: The National Center for the Study of Collective Bargaining in Higher Education, April 1976.

Mannix, Thomas. "The California Experience: Prototype of the Eighties?" Proceedings of Eighth Annual Conference. New York, New York: The National Center for the Study of Collective Bargaining in Higher Education, April 1980.

Neilson, Robert. "Role of Faculty Union in Governance." Proceedings of Fifth Annual Conference. New York, New York: The National Center for the Study of Collective Bargaining in Higher Education, April 1977.

Shipka, T.A. "Collective Bargaining on the Campus - The Tip of the Iceberg." Proceedings of Second Annual Conference. New York, New York: The National Center for the Study of Collective Bargaining in Higher Education, April 1974.

Steiner, Barry N. "The Impact of Collective Bargaining Upon Those Who Govern Higher Education - 1." Proceedings of Sixth Annual Conference. New York, New York: The National Center for the Study of Collective Bargaining in Higher Education, April 1978.

Steiner, Stuart. "Symposium of Collective Bargaining in Community Colleges: A. Mutually Beneficial Collective Bargaining in a Community College." Proceedings of Thirteenth Annual Conference. New York, New York: The National Center for the Study of Collective Bargaining in Higher Education, April 1985.

Wollett, Donald H. "Historical Development of Faculty Collective Bargaining and Current Extent." Proceedings of First Annual Conference. New York, New York: The National Centre for the Study of Collective Bargaining in Higher Education, April 1973.

OTHER SOURCES

Backgrounder, Ministry of Colleges and Universities.

"Collective Bargaining in the Ontario Public Service." By Judge Walter Little, May 1960.

Collective Bargaining Quarterly. Washington D.C.: National Education Association. Vol. ix, No. 1 (June 1986).

"Effects of Collective Bargaining on Teacher-Board Relationship." By Jack Y.L. Lam and Shiu L. Kong, June 1980.

"Faculty Governance and Collective Bargaining." National Education Association, 1982.

"Guidelines for Governors: Colleges of Applied Arts and Technology." August 1972.

"Organization Structures for Collective Bargaining in Ontario Education." By John A. House, February 1980.

"Part-Time Work in Canada: Report of the Commissioner of Inquiry into Part-Time Work." By Joan Wallace, Commissioner, 1983.

"Pension Study for the Colleges of Applied Arts and Technology." By Sedgewick Tomenson Associates and Frank Russell Canada, July 1986.

"Report of A Commission to Review the Collective Negotiations Process between Teachers and School Boards." By B.C. Matthews, June 1980.

"Report of the Advisor to the Minister of Colleges and Universities on the Governance of the Colleges of Applied Arts and Technology." By Walter Pitman, June 1986.

"Survival or Excellence: The Report of The Instructional Assignment Review Committee." By Michael Skolnik, Chairman, July 1985.

"Unravelling the Gordian Knot - Focussing on Perceptions." By Stevenson Kellogg Ernst & Whinney, 2 Vols., November 1986.

APPENDIX

SUMMARY OF RECOMMENDATIONS

APPENDIX

SUMMARY OF RECOMMENDATIONS

Those recommendations marked with an asterisk will require legislative action.

Recommendation #1*
An amended Colleges Collective Bargaining Act should be introduced.

This amended Act should retain certain key features of the current Act, including the right to strike and lock-out, the deemed strike provision, and designated bargaining units.

Major amendments should include a newly designated bargaining agent for the colleges, reconstructed bargaining units, unrestricted scope of bargaining, the encouragement of local bargaining to supplement or vary the provincial agreement, and radically altered timelines and procedures governing strikes and lock-outs.

Recommendation #2*
Collective bargaining should continue to take place at the provincial level, although local bargaining should be strongly encouraged within this provincial framework.

Recommendation 3*
Local bargaining should be encouraged by:

(a) Adding an amendment to the CCBA which includes a preamble legitimizing and encouraging local bargaining. This preamble should include the phrase:

> ***...and whereas it is in the public interest to encourage local bargaining over issues of concern to a particular college of applied arts and technology and a local employee organization...***

(b) Amending the duty of fair representation in S.76 of the CCBA as follows:

> ***An employee organization shall not act in a manner that is arbitrary, discriminatory, or in bad faith in the representation of any of the employees, whether members of the employee organization or not, and shall pay due regard to local issues when bargaining on their behalf.***

> *The employer bargaining agency shall not act in a manner that is arbitrary, discriminatory, or in bad faith in the representation of any of the colleges of applied arts and technology and shall pay due regard to local issues when bargaining on their behalf.*

(c) Adding a new section to the CCBA entitled 'Local Bargaining' as follows:

> *Notwithstanding anything in this Act, the parties, through their local representatives, may enter into local agreements applicable only to a particular college of applied arts and technology.*

Recommendation #4

The government should allow the designated bargaining agent for the colleges to develop a realistic bargaining mandate within the framework of fiscal, policy, and program control of the colleges.

Recommendation #5

The government should refrain from interfering in the bargaining process unless, and until, a state of jeopardy has been declared by the Colleges Relations Commission.

Recommendation #6

The funding mechanism used by the Ministry of Colleges and Universities and the estimates of program costs used by the Ministry of Skills Development should reflect reasonable estimates of costs and conditions of settlements to be negotiated by the bargaining agent.

Recommendation #7

The collective bargaining functions and responsibilities currently performed by the Staff Relations/ Benefits Unit of the Ministry of Colleges and Universities should be transferred to the bargaining agent.

Recommendation #8*

The bargaining agent for the colleges should be a compulsory employers' association, provisionally entitled the Colleges Employee Relations Association (CERA). Each college, as a corporate entity, should be a member of CERA.

CERA should have a governing body consisting of the presidents of the colleges as the designated representatives of their colleges. This governing body should elect an executive committee of five presidents, representing a range of both size of college and geographical location. The executive committee should act as the negotiations steering committee.

Recommendation #9

No change should be made in the legislation covering the bargaining agent for employees, other than specific changes recommended in subsequent chapters of this report.

Recommendation #10

A Colleges Employee Relations Directorate (CERD) should be established and be financed by a levy on each college.

This directorate should report to CERA, through its executive committee, and be responsible for research related to negotiations, forecasting the costs of settlement, developing a negotiating mandate with the colleges and the Ministry of Colleges and Universities, conducting negotiations (assisted by a negotiating team selected from the colleges), and the processing of 'college', 'policy' or 'union' grievances with system-wide implications.

CERD should be headed by an Employee Relations Director, who would be a senior and experienced employee relations professional. Other staff should include an employee relations officer, an analyst, and clerical assistance.

Recommendation #11

The Colleges Employee Relations Directorate (CERD) should provide information on long-term trends in employee related costs to the Council of Regents.

Recommendation #12

The Colleges Employee Relations Directorate (CERD) should undertake consultations over salaries, benefits, and working conditions with the Professional Staff Association (PASA), or any other organization which can demonstrate that it represents substantial numbers of non-unionized employees.

Recommendation #13

The Ministry of Colleges and Universities should adjust its funding to the Colleges so that they can establish CERD. This is estimated as $ 750,000 per year in current dollars. Since it is recommended that CERD take over many of the functions now performed by the Staff Relations/Benefits Unit of the Ministry, the net new expenditure is expected to be minimal.

Recommendation #14

The Ministry of Colleges and Universities should provide funding to the colleges and the College Relations Commission for the development of a comprehensive, system-wide, human resource information system for use at both local and provincial levels. This should be done by CERD in cooperation with OPSEU and the College Relations Commission. The one-time cost should be approximately $200,000.

Recommendation #15

Major decisions within CERA, including ratification of mandates and collective agreements, should be by a 'double majority' system, requiring a majority of the colleges which also represent a majority of the members of the respective bargaining units.

Recommendation #16*

Ratification of collective agreements by the union should also follow this double majority process but be based on a majority of colleges and a majority of votes cast overall.

Recommendation #17*

Amend the CCBA to provide for a category of 'system-wide' grievances. Such grievances will be considered to be between the Colleges Employee Relations Association (CERA) and the employee organizations.

Recommendation #18

Transfer the functions of the Staff Relations/ Benefits Unit of MCU to the Colleges Employee Relations Directorate. Include in the mandate of CERD the responsibility for giving advice to the colleges on the administration of the collective agreements while ensuring that actual administration remains at the local college level except for 'system-wide' grievances.

Recommendation #19

CERD should develop, in cooperation with the senior human resource managers in the colleges, and the employee organizations, a training and development program in contract administration knowledge and skills, which is based on the colleges' collective agreements and which becomes part of the professional development of academic and support staff administrators and managers, as well as stewards and other union officers.

Recommendation #20

Competence in contract administration activities should be included as a performance criterion in the performance appraisal systems that the colleges use for managers and administrators.

Recommendation #21

CERD should adopt the practice of collecting, analyzing, and disseminating interpretations of arbitration awards issued within the system. This should include awards under workload and classification provisions, even though such awards may not be binding on other colleges.

Recommendation #22

Each college should have a senior human resource management professional, at the vice-president level, who participates actively in executive committee decisions even if they do not apparently involve narrowly defined employee relations matters.

Recommendation #23

CERD should develop an employee relations survey in cooperation with the colleges and OPSEU. This survey should be administered on at least a bi-annual basis to track the employee relations climate.

Recommendation #24*

Allow all employees collective bargaining rights under the CCBA with the exception of those who:

- exercise managerial functions;
- are employed in a confidential capacity in matters relating to collective bargaining;
- are students at a college working at a placement under a co-operative program;
- are members of professions which do not permit unionization (architecture, medicine, dentistry, engineering, and law) if they are employed in the colleges in their professional capacities;

- are engaged and employed outside Ontario;
- are graduates of colleges of applied arts and technology during the period of twelve (12) months immediately following completion of a course of study at the college by the graduate if the employment of the graduate is associated with a certification, registration or other licensing requirement.

Recommendation #25*

Restructure the bargaining units defined in Schedules 1 and 2 of the CCBA to read as follows:

A1. Teachers, counsellors, and librarians who usually teach more than six (6) hours per week except supply teachers.

A2. Teachers, counsellors and librarians who usually teach six (6) or less hours per week and supply teachers.

S1. Support staff who usually work more than seven (7) hours per week.

S2. Support staff who usually work seven (7) or less hours per week.

Recommendation #26*

The current bargaining agent should continue as the designated bargaining agent for the A1 and S1 bargaining units. While the A2 and S2 bargaining units should have the right to bargain collectively, any employee organization wishing to represent them should have to apply for certification and such certification should only be granted on a province wide basis based on a 'double majority' process.

Recommendation #27*

Allow OPSEU and CERA a period of twelve (12) months from the date of proclamation of amendments to the CCBA to negotiate terms and conditions of employment for the various categories of employees who will be accorded bargaining and representation rights. If they are unable to reach agreement, the terms and conditions of employment should be referred to binding arbitration.

This period of twelve (12) months should be adjusted depending on the date of proclamation of legislative amendments so that the resolution of this matter precedes the negotiation of a new collective agreement.

Recommendation #28*

The Colleges Collective Bargaining Act should include the following provisions relating to the negotiation of collective agreements for academic and support staff bargaining units:

(a) The termination date of the collective agreement shall be left to the parties themselves to negotiate.

(b) Notice to bargain shall be given 90 days before the expiry of a collective agreement and the parties shall meet within thirty days of the serving of notice to bargain in good faith.

(c) The union may vote to strike, or the employer may vote to lock-out at such time as each may decide, but no strike or lock-out shall be permitted until 30 days notice of strike or lock-out has been given and the collective agreement has expired.

(d) Such votes shall be supervised by the Colleges Relations Commission. They shall be valid for a period of three (3) months after such time the parties will be required to hold another vote before strike or lock-out action is taken.

(e) Within three (3) days of notice to strike or lock-out being given, the College Relations Commission shall appoint a mediator who, within a further five (5) days, shall recommend whether a fact finder should be appointed.

(f) In the event that a fact finder is appointed, the appointment shall be made within three (3) days of the recommendation in (e) above. The fact finder shall meet with the parties and prepare a report for distribution to the parties and the public within 15 days of the appointment.

(g) No strike or lock-out shall occur until five (5) days after the release of the fact finder's report or the final offer vote in (h), below.

(h) At any time up to five (5) days before a strike is to occur, the employer may request a vote on its final offer and such a vote shall be conducted by the CRC within five (5) days of such request being made and the strike date shall be postponed by five (5) days. This offer shall be presented to the union at the time that the request is made.

(i) Notwithstanding any of the above, the CRC may appoint a mediator at any time that it judges such an appointment to be appropriate.

Recommendation #29

The College Relations Commission should substantially revise its procedures for conducting supervised votes with a view to improving the effectiveness of supervision.

Recommendation #30*

A new CAAT pension plan should be developed with one half of the pension board's members being union representatives. The chair of the pension board should be a neutral, appointed by the government following consultation with the colleges and the union, who shall only cast a vote in the event of a tie.

Recommendation #31*

The prohibition on the negotiation of superannuation (pensions) should be removed from the Colleges Collective Bargaining Act.

Recommendation #32*

The mandate of the CRC should be amended to include all judicial and quasi-judicial functions relating to collective bargaining in the colleges including, but not limited to, matters of certification, the composition of bargaining units, determination of unfair labour practices, and charges of bad faith bargaining.

Recommendation #33

A further $200,000 should be appropriated for its annual budget to add a colleges employee relations officer, to fund the development and maintenance of a colleges′ collective bargaining data base, and to offer a program for local employee relations improvement to the colleges.

Recommendation #34

The College Relations Commission should review its procedures for carrying out supervised votes in the colleges and work with both union representatives and representatives of college administration to streamline and improve these procedures.

Recommendation #35

Select bargaining team members for their interpersonal skills as well as for their knowledge of the issues.

Recommendation #36

Prepare all bargaining team members thoroughly so that the inexperienced members are aware of the emotional demands of negotiations and how to cope with them.

Recommendation #37

Prepare and discuss an explicit statement of the desired relationship which should emerge from bargaining, review this statement periodically during the negotiations and review all communications about the bargaining process against the explicit statement developed above.

Recommendation #38

Jointly, during bargaining, take some time to discuss the relationship that is emerging from bargaining as well as the substantive issues.